

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

ARM LTD.,

Plaintiff,

v.

QUALCOMM INC., QUALCOMM
TECHNOLOGIES, INC., and NUVIA, INC.,

Defendants.

C.A. No. 22-1146-MN

**REDACTED - PUBLIC
VERSION FILED
JANUARY 10, 2025**

EXHIBIT A TO PLAINTIFF'S MOTION TO SEAL AND REDACT

Dated: January 3, 2025

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Exhibit A

13:41:50 1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF DELAWARE

3
4
5 ARM LTD.,)
6 a U.K. corporation,)
7)
8 Plaintiff,)
9) C.A. No. 22-1146 (MN)
10 v.)
11)
12 QUALCOMM, INC.,)
13 a Delaware corporation,)
14 et al.,)
15)
16 Defendants.)
17
18

19 Wednesday, November 20, 2024
20 2:00 p.m.
21 Pretrial Conference
22

23 844 King Street
24 Wilmington, Delaware
25

26 BEFORE: THE HONORABLE MARYELLEN NOREIKA
27 United States District Court Judge
28

29 APPEARANCES:

30
31 YOUNG CONAWAY STARGATT & TAYLOR
32 BY: ANNE SHEA GAZA, ESQ.
33 BY: ROBERT M. VRANA, ESQ.
34 BY: DANIEL MACKRIDES, ESQ.
35

36 -and-
37
38

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23 -----
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14:00:58 23

14:00:58 24 COURTROOM DEPUTY: All rise. The United States
14:00:58 25 District Court for the District of Delaware is now in

14:04:02 1 session. The Honorable Maryellen Noreika presiding.

14:04:02 2 THE COURT: All right. Good afternoon,

14:04:04 3 everyone. Please be seated.

14:04:06 4 All right. Ms. Gaza.

14:04:09 5 MS. GAZA: Good afternoon, Your Honor. Anne

14:04:11 6 Gaza from Young, Conaway on behalf of plaintiff, ARM. I'm

14:04:15 7 joined today by Daralyn Durie, Erik Olson, Shaelyn Dawson,

14:04:22 8 Nicholas Fung, Daniel Muino, Henry Huttinger, Laura Gilbert

14:04:28 9 Remus all from Morrison Foerster as well as my colleagues,

14:04:32 10 Rehoboth Vrana and Daniel Mackrides.

14:04:35 11 THE COURT: All right. Good afternoon everyone.

14:04:37 12 MR. BLUMENFELD: Good afternoon, Your Honor.

14:04:38 13 THE COURT: Good afternoon.

14:04:39 14 MR. BLUMENFELD: Jack Blumenfeld from Morris

14:04:44 15 Nichols for Qualcomm and NuVia. With me at counsel table

14:04:47 16 are Karen Dunn, Catherine Nyrady and Jacob Braly from Paul

14:04:53 17 Weiss. Behind them, Jennifer Ying from Morris Nichols, Erin

14:04:57 18 Morgan from Paul Weiss, and behind them, Flint Patterson,

14:05:02 19 Ruby Garrett and, Chris Longman from Qualcomm.

14:05:06 20 THE COURT: All right. Welcome to all of you

14:05:08 21 and good afternoon.

14:05:09 22 Okay. All right. Let me just get my document

14:05:19 23 ready here.

14:05:26 24 So I appreciate the letter that we received last

14:05:31 25 night from the defendants on simplifying the case. I think

14:05:39 1 it's dropping the counterclaims. How are we going to
14:05:43 2 resolve those?

14:05:46 3 MS. DUNN: Your Honor, they're out of the case,
14:05:51 4 so we are dropping them as claims.

14:05:54 5 THE COURT: So I always run into this problem
14:05:56 6 and then I get like after the case are they dismissed, are
14:06:00 7 they dismissed with prejudice, did you fail to put in
14:06:03 8 evidence on them, so I'm granting judgment, what are we
14:06:07 9 doing with them? You can't just say we're dropping them.
14:06:10 10 They're in the case. How do I get them out of it?

14:06:13 11 MS. DUNN: We can file a voluntary withdraw of
14:06:16 12 the claims if that is what Your Honor would like.

14:06:22 13 THE COURT: I want to know what you guys have
14:06:24 14 agreed to do. So have you talked with the other side?

14:06:28 15 MS. DUNN: We talked to the other side and
14:06:30 16 agreed that we would drop the claims so they're aware. I
14:06:33 17 don't think we've talked mechanically how we would do that.
14:06:36 18 We're happy to do that and make a submission to the Court.

14:06:39 19 THE COURT: That would be very helpful.

14:06:40 20 MS. DUNN: Okay.

14:06:41 21 THE COURT: And I don't mean to suggest that I
14:06:43 22 don't appreciate that you're dropping them, it's just that I
14:06:47 23 have gotten myself into trouble before when I don't figure
14:06:50 24 out what that means.

14:06:51 25 MS. DUNN: Understood, Your Honor. Plaintiff's

14:06:53 1 dropped their trademark claims last time on the record.

14:06:56 2 THE COURT: We should probably do something
14:06:58 3 similar, so maybe you all can figure out how that works. It
14:07:01 4 was just I should have thought of it before when they did
14:07:05 5 the trademark claims and I just didn't, but this morning for
14:07:08 6 some reason reading that letter I had a vision of the
14:07:11 7 posttrial briefing.

14:07:12 8 MS. DUNN: Understood.

14:07:13 9 THE COURT: And having to deal with it.

14:07:14 10 MS. DUNN: We'll work it out. Thank you, Your
14:07:17 11 Honor.

14:07:17 12 THE COURT: Thank you. Okay.

14:07:20 13 The Daubert motions, I have a draft order and
14:07:32 14 for whatever motions are remaining, other than the ones
14:07:38 15 defendants brought about Mr. Schoettelkotte, I am going to
14:07:42 16 deny them. And I'll get you that opinion shortly.

14:07:49 17 I'm confused with respect to Mr. Schoettelkotte,
14:07:53 18 and I read his deposition, and I don't even know how the
14:07:58 19 person who took that deposition had the patience to deal
14:08:01 20 with it, because I was trying to understand what he was
14:08:05 21 testifying on and I don't -- I don't understand it. I mean,
14:08:10 22 he's an accountant, so I would certainly understand if he
14:08:13 23 was going to testify about damages. I don't think he should
14:08:16 24 be testifying to the jury that there are no money damages
14:08:20 25 because that's an issue for me. So then it seemed like he's

14:08:26 1 left to say, hey, there is reputational damages or there is
14:08:31 2 potential damages for future contract, but for that, I'm not
14:08:38 3 sure why he is an expert to do that and he seems like he's
14:08:42 4 just relying on fact people, factual testimony from people
14:08:45 5 who could testify and the jury could decide. So I just
14:08:50 6 don't understand what he's adding as an expert that's in his
14:08:58 7 expertise.

14:08:59 8 MR. OLSON: So let me start with the opportunity
14:09:02 9 potentially as we did last time for simplification. We have
14:09:07 10 told -- there was a discussion on this yesterday. We don't
14:09:09 11 intend to call Mr. Schoettelkotte before the jury for any
14:09:12 12 purpose and they don't intend to call -- therefore don't
14:09:16 13 intend to call Mr. Kennedy. Mr. Kennedy had been on two
14:09:19 14 issues, one, their counterclaims, they've now dropped those,
14:09:23 15 and then he was responsive to Mr. Schoettelkotte.
14:09:27 16 Mr. Schoettelkotte's testimony if at all will be relevant to
14:09:31 17 specific performance and you can decide what weight to give
14:09:35 18 it in that context.

14:09:37 19 THE COURT: Okay. So how about this. I am
14:09:40 20 going to deny that motion as moot given that you're not
14:09:46 21 going to call him before the jury. To the extent that you
14:09:49 22 do wind up calling him in front of me, you guys can re-raise
14:09:55 23 any concerns that you have and I'll deal with them. Okay?

14:09:58 24 MR. OLSON: Understood, Your Honor.

14:09:59 25 THE COURT: All right. Thank you for that.

14:10:00 1 Okay. Are there any other issues, and I know
14:10:04 2 you guys offered to tell us in advance what you had come to
14:10:08 3 an agreement on and I thought it was just as easy at this
14:10:11 4 point for you to tell me here. So I understand that
14:10:15 5 Mr. Schoettelkotte and Mr. Kennedy will not be testifying in
14:10:18 6 front of the jury. Anything else that you all worked out?

14:10:25 7 MS. YING: Your Honor, Jennifer Ying from Morris
14:10:27 8 Nichols on behalf of the defendants. There are two
14:10:29 9 paragraphs in the PTO cover that we have resolved, and then
14:10:33 10 there are two MILs that the parties have reached agreement
14:10:37 11 on that we'll put on the record. With regards to the PTO
14:10:40 12 cover, paragraph 49, the parties have agreed to adopt
14:10:45 13 defendants' proposal on demonstratives that need to be
14:10:48 14 disclosed. For paragraph 72 in the PTO cover, the parties
14:10:55 15 have also agreed to adopt defendants' proposal regarding
14:10:59 16 disclosing transition statements in connection with
14:11:02 17 deposition testimony.

14:11:05 18 THE COURT: Okay.

14:11:06 19 MS. YING: I will turn the floor over to
14:11:08 20 Mr. Olson with regards to plaintiff, ARM MIL number 1 that
14:11:12 21 we've reached an agreement on and then I will put on the
14:11:15 22 record our agreement for defendants' MIL number 3 that we've
14:11:19 23 also reached agreement on.

14:11:20 24 THE COURT: Okay. Give me one second. Remove
14:11:26 25 those other paragraphs. Okay. Which motion in limine is

14:11:30 1 this?

14:11:31 2 MR. OLSON: This is motion in limine number 1
14:11:33 3 having to do with evidence and argument regarding specific
14:11:36 4 performance, Your Honor. What the parties have agreed is
14:11:40 5 that -- I want to get the defendant -- they use -- I'm
14:11:48 6 reading from an e-mail. The defendants agree not to make
14:11:52 7 arguments or present evidence regarding ARM's requested
14:11:55 8 remedies, specific performance, or the scope, nature or
14:11:59 9 impact of that requested remedy. Plaintiffs understand that
14:12:04 10 defendants want to be able to present evidence regarding
14:12:07 11 Section 15.1 of the NuVia ALA and correspondence between the
14:12:13 12 parties and Qualcomm regarding ARM's request that Qualcomm
14:12:17 13 comply with that provision as well as examine ARM's
14:12:21 14 witnesses regarding the requests and the parties'
14:12:23 15 communications. And as a reminder, Section 15.1 includes
14:12:27 16 the words licensee, NuVia. We will immediately discontinue
14:12:34 17 any use and distribution of a series things and that
14:12:38 18 includes licensee shall either destroy or return to ARM a
14:12:42 19 series of things.

14:12:43 20 Further, defendants in their response and
14:12:47 21 agreement said that defendants intend to argue at trial that
14:12:49 22 the remedy provided in 15.1 includes the destruction of
14:12:54 23 material and that ARM sought destruction. With those
14:12:58 24 statements, there is an agreement that there will not be,
14:13:01 25 again, evidence and argument regarding specific performance.

14:13:05 1 THE COURT: All right. And defendants agree?

14:13:10 2 MS. DUNN: We do, Your Honor.

14:13:11 3 THE COURT: Thank you.

14:13:13 4 MS. YING: Your Honor, with respect to

14:13:17 5 defendants' motion in limine number 3, and that's regarding

14:13:19 6 the Apple v. Williams case and the use of documents from

14:13:23 7 that litigation, the parties have agreed that ARM may

14:13:26 8 question Mr. Williams about the substance of those documents

14:13:30 9 subject to the following: ARM will not reference the NuVia

14:13:34 10 or Williams Bates stamps on those documents and will not

14:13:38 11 reference the Apple v. Williams litigation or that these

14:13:43 12 documents came from that litigation. Defendants have

14:13:45 13 represented that the documents were collected prior to the

14:13:50 14 termination of the NuVia ALA and on that basis, ARM will not

14:13:54 15 examine Mr. Williams regarding whether he personally

14:13:57 16 possessed the documents produced in the Apple v. Williams

14:14:01 17 litigation following the termination of the NuVia ALA.

14:14:06 18 ARM will not argue that the possession of these

14:14:09 19 documents post termination of the NuVia ALA constitutes a

14:14:14 20 violation or breach of Section 15.1 of the NuVia ALA. ARM

14:14:19 21 reserves the right to refer to the Bates stamps if

14:14:23 22 Mr. Williams denies that he personally possessed these

14:14:26 23 documents bearing the Williams stamps or that NuVia did not

14:14:30 24 possess the documents bearing the NuVia stamp. And

14:14:33 25 defendants do not waive any argument that the Apple v.

14:14:36 1 William documents constitute ARM confidential information or
14:14:40 2 are subject to the NuVia ALA termination provision.

14:14:45 3 THE COURT: All right. Thank you. And you all
14:14:47 4 agree to that, plaintiffs?

14:14:49 5 MS. DURIE: Yes, Your Honor.

14:14:49 6 THE COURT: Okay. Thank you for coming to those
14:14:53 7 agreements.

14:14:53 8 All right. Then we have ARM's motion in limine
14:14:59 9 number 2 which is excluding evidence that either party
14:15:03 10 breached the Qualcomm ALA including the October 22nd letter.
14:15:11 11 And this one -- all right. Let me hear from ARM.

14:15:31 12 MR. OLSON: Thank you, Your Honor.

14:15:39 13 First there is agreement within the papers that
14:15:45 14 defendants will not refer to the second lawsuit or to the
14:15:48 15 allegations of breach regarding Section [REDACTED]

14:15:53 16 THE COURT: Or [REDACTED]

14:15:54 17 MR. OLSON: Or [REDACTED] correct. So those issues,
14:15:59 18 that part of the motion in limine is resolved.

14:16:02 19 It appears that the center of the issue is the
14:16:08 20 October 22nd letter.

14:16:09 21 THE COURT: Just so I'm clear, it was -- I
14:16:14 22 didn't understand it to be referring to the lawsuit, I
14:16:17 23 understood it to be mentioning that there was another
14:16:20 24 breach. So by you saying you're not going to refer to the
14:16:24 25 lawsuit, you mean they're not going to assert that there was

14:16:27 1 a breach?

14:16:28 2 MR. OLSON: That they're not going to assert or
14:16:30 3 make claims, introduce evidence regarding a separate breach
14:16:34 4 of the ALA. And I understand them to not -- to saying that
14:16:39 5 they're not going to refer to the lawsuit, I may have that
14:16:42 6 wrong.

14:16:42 7 THE COURT: I wanted to make sure it was both.

14:16:45 8 MS. DUNN: Yes, Your Honor, it was both, we
14:16:47 9 don't believe those breaches --

14:16:48 10 THE COURT: You're not going to be talking about
14:16:50 11 those?

14:16:51 12 MS. DUNN: Yes, we're not going to be talking
14:16:53 13 about it.

14:16:53 14 THE COURT: All right. Okay. And I think I got
14:16:56 15 from the papers that you said with respect to that, the only
14:17:00 16 reason you would do that is if they opened the door to
14:17:03 17 something, which makes sense.

14:17:04 18 MS. DUNN: Yes, Your Honor.

14:17:05 19 THE COURT: Okay. Then we have the October 22nd
14:17:07 20 letter which defendants says evidences ARM's scheme to
14:17:12 21 prevent Qualcomm from commercializing its custom CPU.

14:17:17 22 MR. OLSON: Understood, Your Honor. And we
14:17:18 23 don't believe that the letter has any probative evidence
14:17:21 24 towards the question of the license defense which is the
14:17:25 25 only issue under which it would have a meaning or importance

14:17:29 1 in connection with this trial.

14:17:30 2 And the license defense entirely depends on what
14:17:35 3 is the nature and scope of the Qualcomm ALA and license. It
14:17:40 4 does not then depend on what notices of material breach were
14:17:45 5 given, whether those will result in cure, what discussions
14:17:48 6 are happening between the parties over cure and what will
14:17:52 7 happen if it is not cured.

14:17:54 8 Moreover, California law generally says that
14:18:00 9 the motives for enforcing a contract are not relevant to the
14:18:06 10 determination of whether or not a breach has occurred within
14:18:10 11 the nature and scope of the existing contract. You
14:18:14 12 determine the nature and scope of the contract based on the
14:18:18 13 language of the agreement and the scope of its license. For
14:18:22 14 both of these reasons, the evidence is not relevant.

14:18:27 15 And the Century 21 case speaks to that issue.
14:18:31 16 So also the Century 21 case also cites a Seventh Circuit
14:18:36 17 opinion called *Tuf Racing Products v. American Suzuki* which
14:18:42 18 is 223 F.3d 585 from Judge Posner speaking to the same issue
14:18:48 19 regarding motive for enforcement. Your motive for enforcing
14:18:53 20 a contract is not evidence of whether or not the contract is
14:18:57 21 being breached or not being breached in the context.

14:19:00 22 And given these circumstances, we don't believe
14:19:05 23 that it provides any relevance and it further then creates
14:19:08 24 undue prejudice under 403 in light of the creating a
14:19:16 25 question in the jury's mind regarding -- in many ways what

14:19:20 1 goes also to specific performance of what the downstream
14:19:24 2 effects may be one way or the other.

14:19:26 3 THE COURT: All right. Let me hear from
14:19:28 4 defendants.

14:19:28 5 MR. OLSON: Thank you, Your Honor.

14:19:30 6 MS. NYARADY: Thank you, Your Honor. Catherine
14:19:34 7 Nyarady for Qualcomm. As Mr. Olson said and is in our
14:19:38 8 papers, we do have a defense based on -- we have a
14:19:40 9 counterclaim and a defense based on the Qualcomm ALA covers
14:19:44 10 our products. And with respect to Qualcomm's alleged breach
14:19:50 11 under the Qualcomm ALA, ARM itself has put that in the case
14:19:56 12 starting at the very beginning. When you go to their answer
14:19:59 13 at DI 21, they say Qualcomm is not only trying to develop an
14:20:06 14 unlicensed product, but it's also materially breaching its
14:20:09 15 ALA with ARM. It then goes on multiple more times in
14:20:14 16 paragraph 250 --

14:20:15 17 THE COURT: Wait, I thought you guys agreed that
14:20:20 18 nobody was going to talk about breaching the Qualcomm ALA.

14:20:25 19 MS. NYARADY: That's with respect to ARM's
14:20:27 20 breach of the ALA, that's the subject of the second lawsuit.
14:20:30 21 I think we're talking here the second piece of this that is
14:20:33 22 not agreed upon is the Qualcomm breach which is the subject
14:20:35 23 of that October 22nd letter as well. And I'm just making
14:20:38 24 the point, Your Honor, that this breach has been in the case
14:20:42 25 since the very beginning. And it's been in the case as a

14:20:46 1 result of the response that ARM gave to our counterclaim and
14:20:50 2 to our defense when we said that we're licensed under the
14:20:53 3 Qualcomm ALA.

14:20:55 4 So as early as November 15, 2022, in DI 21,
14:21:00 5 there are multiple allegations made by ARM in the pleadings,
14:21:07 6 at paragraph 250 they say Qualcomm is materially breaching
14:21:10 7 its own ALA and giving ARM the right to terminate that
14:21:15 8 agreement. And Qualcomm -- the Qualcomm ALA does not
14:21:18 9 provide licensing coverage for the products in question.

14:21:21 10 There is more reference to this, there is at
14:21:23 11 least five or six references throughout their pleading. In
14:21:26 12 the most recent pleading at DI 318, they repeal all these.
14:21:32 13 The breach of the Qualcomm ALA, it's not an issue in the
14:21:35 14 case in terms of it's not on the verdict form that they have
14:21:38 15 sought a breach of the Qualcomm ALA, but we have asked for a
14:21:42 16 determination that our products are covered by the Qualcomm
14:21:44 17 ALA, that is on our proposed verdict form.

14:21:48 18 And in response to that, there have been
14:21:50 19 repeated allegations that the Qualcomm ALA has been breached
14:21:55 20 by Qualcomm. The letter on October 22nd is actually not new
14:21:59 21 news in the sense of alleging these breaches. It has been
14:22:03 22 in the case squarely and we anticipate that it is going to
14:22:07 23 be raised by ARM in response to the arguments that we have
14:22:09 24 regarding the fact that our products are licensed.

14:22:12 25 In addition, most recently at the pretrial order

14:22:15 1 that was filed, in Exhibit 2 at paragraph 16, ARM confirms
14:22:23 2 that one of the issues that remains to be litigated is
14:22:26 3 whether Qualcomm's ALA provides a license to the technology
14:22:30 4 developed by NuVia prior to the acquisition, and then at
14:22:35 5 Exhibit 13 of the pretrial order in plaintiff's statement of
14:22:39 6 intended proofs, there are numerous paragraphs talking at
14:22:42 7 length about the Qualcomm ALA, the scope of the ALA. In
14:22:49 8 addition -- the paragraphs for reference, it's 25, 26, 27 --

14:22:54 9 THE COURT: But help me out, I don't understand
14:22:57 10 the scheme. You want to say look, you're not saying we
14:23:05 11 didn't -- you're saying we didn't breach because whatever,
14:23:12 12 and then you're saying but we're licensed? How is you being
14:23:22 13 licensed under a separate agreement a defense to whether
14:23:26 14 Qualcomm breached or NuVia breached the original agreement?

14:23:30 15 MS. NYARADY: Well, Qualcomm and NuVia obviously
14:23:33 16 are separate parties.

14:23:34 17 THE COURT: I know, I know, please don't tell me
14:23:36 18 that. I get it. I'm not that dumb. I got it.

14:23:39 19 MS. NYARADY: The issue, Your Honor, is the fact
14:23:41 20 that ARM has taken the position that Qualcomm is selling
14:23:45 21 unlicensed products currently. And so the response to that
14:23:51 22 has been that we are licensed under the Qualcomm ALA, we are
14:23:54 23 allowed to take the technology from NuVia under the Qualcomm
14:23:58 24 ALA and work with that technology as we've done.

14:24:03 25 THE COURT: They're arguing that part of the

14:24:04 1 breach is that you all, whichever party, was supposed to
14:24:10 2 destroy everything and didn't, and the defense is well,
14:24:20 3 we're licensed to have it, so we didn't have to destroy it?

14:24:24 4 MS. NYARADY: Yes, Your Honor, I think that's
14:24:26 5 part of it. That we got the material under the Qualcomm ALA
14:24:31 6 pre-termination and we're licensed under the Qualcomm ALA,
14:24:34 7 these are not unlicensed products. We also importantly,
14:24:38 8 Your Honor, have an unclean hands defense.

14:24:40 9 THE COURT: That's not going before the jury,
14:24:43 10 though, right? Isn't that an equitable defense?

14:24:48 11 MS. NYARADY: I think there is a question as to
14:24:51 12 the full scope of what's going to the jury.

14:24:53 13 THE COURT: When are you going to decide that?
14:24:55 14 We're at the pretrial conference.

14:24:57 15 Let her finish this one and then I'll let you go
14:25:01 16 to that. But yeah, okay.

14:25:04 17 MS. NYARADY: But there are allegations
14:25:06 18 regarding why ARM refused, for example, to give consent to
14:25:10 19 the acquisition, and again, you know, we've said this
14:25:17 20 before, but part of the motivation was getting out from
14:25:20 21 under the Qualcomm ALA. So the Qualcomm ALA has been
14:25:24 22 intertwined with a number of issues that are directly
14:25:27 23 relevant.

14:25:27 24 THE COURT: Okay. So I am going to grant this
14:25:30 25 motion in limine. No other parties can assert that the

14:25:35 1 other one breached the Qualcomm ALA. The October 22nd
14:25:42 2 letter defendants claim is relevant to show ARM's scheme but
14:25:47 3 it seems more prejudicial and confusing than helpful. So I
14:25:53 4 am not going to allow that. That being said, I don't think
14:25:58 5 that that ruling precludes defendants from arguing that the
14:26:04 6 products are licensed. Right? There is no -- just make
14:26:09 7 sure I'm not misunderstanding my ruling.

14:26:12 8 MS. NYARADY: I would agree that your ruling
14:26:13 9 does not impact our ability to argue that the products are
14:26:15 10 licensed.

14:26:16 11 THE COURT: Okay. Thank you. All right. So
14:26:18 12 that is my ruling on plaintiff's motion in limine number 2.
14:26:22 13 And Ms. Dunn, if you want to tell me about unclean hands
14:26:26 14 just to get that out of the way, that's fine.

14:26:28 15 MS. DUNN: So, Your Honor, I am prepared to
14:26:32 16 address an issue that came up in the pretrial order draft
14:26:37 17 which is this issue of whether ARM says that we have DJ
14:26:45 18 claims that are equitable. Our view is they are not
14:26:49 19 equitable and there is a lot of law on this. It's not been
14:26:52 20 briefed before Your Honor, there is Supreme Court precedent,
14:26:55 21 Third Circuit precedent. I'm very happy to speak about this
14:26:59 22 today, but Your Honor may want --

14:27:00 23 THE COURT: You can give me three pages and they
14:27:03 24 can respond in three pages, that's it.

14:27:05 25 MS. DUNN: We're happy to do that.

14:27:07 1 THE COURT: How many issues are there?

14:27:11 2 MS. DUNN: Well, we moved for a declaratory

14:27:14 3 judgment on five issues.

14:27:21 4 THE COURT: What are the issues that you have a

14:27:22 5 dispute as to whether they're equitable or they're going to

14:27:26 6 the jury? I don't care about --

14:27:29 7 MS. DUNN: I think all of them, although I'm not

14:27:32 8 sure this has been discussed about granularity with the

14:27:37 9 parties.

14:27:37 10 THE COURT: You have three pages to convince me.

14:27:40 11 You need to talk about it first. And you need to get it to

14:27:43 12 my Friday, your part, and you can respond by Monday.

14:27:45 13 MS. DURIE: Okay.

14:27:47 14 MS. DUNN: Yes, Your Honor.

14:27:48 15 THE COURT: Plaintiff's motion in limine number

14:27:50 16 3 seeks to exclude evidence relating to the nature, scope,

14:27:55 17 or amount of royalties paid by defendants to ARM under the

14:27:59 18 Qualcomm TLA. ARM says those royalties are irrelevant to

14:28:06 19 the breach issues and defendants want to use the TLA royalty

14:28:10 20 to show ARM's motive behind the case, that it wants more

14:28:14 21 money and they also want to use it as part of their defense.

14:28:17 22 So can someone tell me, I tried to figure out

14:28:22 23 from looking at those contracts what these royalties are, I

14:28:25 24 think you just left off schedules or something because I

14:28:28 25 don't know. So what are we talking about here?

14:28:32 1 MR. OLSON: So we're talking about royalties
14:28:38 2 that are paid by Qualcomm to ARM --

14:28:41 3 THE COURT: How much?

14:28:42 4 MR. OLSON: There are in the neighborhood of [REDACTED]

14:28:47 5 [REDACTED] But they involve only what are called the TLAs,
14:28:53 6 and they involve products, none of which are in this case,
14:28:57 7 and involve cores that are licensed by ARM to Qualcomm, none
14:29:03 8 of which are in this case. So what happens with a series of
14:29:09 9 older products, not in this case, ARM has licensed to
14:29:15 10 Qualcomm fully developed completed CPU cores, that
14:29:26 11 technology, Qualcomm has taken those cores and put them in
14:29:30 12 certain products. None of those products where they did
14:29:32 13 that are in this case. And after they put them in and sell
14:29:35 14 those, they then pay ARM a royalty under the TLA for that
14:29:42 15 fully developed core that they took and put in. Different
14:29:45 16 than the ALA, it's not about an ALA, it's not about that at
14:29:50 17 all.

14:29:50 18 And the very specific concern that we have is
14:29:53 19 that the defendants will say we're paying [REDACTED] in
14:29:59 20 royalties to you guys and that will create a prejudice and
14:30:05 21 ambiguity in the jury's mind as to whether or not we are
14:30:08 22 already being compensated for the activities that are at
14:30:14 23 issue in this case and there is zero doubt, there is zero
14:30:17 24 dispute that the royalties that are being paid and the
14:30:20 25 amounts involved have nothing to do with the items that are

14:30:24 1 in this case.

14:30:25 2 Now, defendants separately want to argue that
14:30:30 3 the differential in royalty rates, for example, between the
14:30:34 4 NuVia ALA and -- which was higher than the Qualcomm ALA was
14:30:39 5 a motivation to request consent or deny consent with respect
14:30:45 6 to the activities. And they make claims about the
14:30:49 7 differential in rates as it applies to the ALA's and the
14:30:54 8 TLAs. To be frank, we don't think that that is nearly as
14:30:58 9 prejudicial as a statement outstanding which I think is
14:31:03 10 severely prejudicial that we're paying you a lot of money
14:31:08 11 already, we're your big partner, we give you, you know, [REDACTED]
14:31:14 12 [REDACTED] whatever the number will be, and effectively
14:31:17 13 implying or suggesting that we've already been compensated
14:31:21 14 because there is no doubt that's not true.

14:31:22 15 Even the differential between the ALA's and the
14:31:26 16 TLAs we think is irrelevant and prejudicial. The question
14:31:30 17 of motivation is sufficiently shown by the fact that the
14:31:33 18 NuVia ALA if it's relevant at all, which we've already
14:31:37 19 indicated we don't think it's relevant, if it's relevant at
14:31:40 20 all, the differential between the NuVia ALA which is
14:31:43 21 [REDACTED] more than the Qualcomm ALA, is
14:31:49 22 more than sufficient, but the reference to prior large
14:31:53 23 amounts being transferred for other technology in other
14:31:59 24 business arrangements for other products involving other
14:32:02 25 cores none of which are in this case we think should be

14:32:05 1 excluded.

14:32:12 2 MS. NYARADY: Your Honor, I want to make it very
14:32:18 3 clear that defendants are not going to argue that ARM has
14:32:22 4 already been compensated for the conduct at issue in this
14:32:26 5 litigation through those TLA payments.

14:32:29 6 I would like to correct the record, though, when
14:32:31 7 Mr. Olson says that the TLA has nothing to do with the
14:32:36 8 products in the case, payments under the TLA. That is
14:32:40 9 incorrect. The products in this case actually have a
14:32:43 10 royalty under the ALA and the TLA. So the TLA is relevant
14:32:50 11 in that regard.

14:32:50 12 But to be very clear, not only do we not intend
14:32:54 13 to imply that, we have on our witness -- I'm sorry, our
14:32:59 14 exhibit list, royalty credit memos that show that we have
14:33:04 15 tried to pay for the current products in the lawsuit under
14:33:08 16 the Qualcomm ALA, and so we are affirmatively going to put
14:33:13 17 in evidence that will resolve any of the concern that's been
14:33:17 18 raised by ARM in terms of, you know, misleading the jury or
14:33:20 19 confusing the jury. We are not going to say that any of
14:33:23 20 these payments that have been made somehow, you know,
14:33:27 21 satisfy payments that should be made with respect to these
14:33:30 22 products.

14:33:31 23 Now with respect to the relevance of the TLA
14:33:36 24 payments, it seems to us that ARM is really attempting to
14:33:41 25 tell half the story, if you will, of the relationship

14:33:44 1 between the parties. We are going to be -- Qualcomm is
14:33:48 2 going to be accused of acting in bad faith. We think the
14:33:53 3 TLA payments and the performance under the TLA for all
14:33:56 4 products across the Ecosystem show that Qualcomm is acting
14:34:00 5 in good faith under the agreements, that in combination with
14:34:03 6 our attempts to pay for all the products even in the lawsuit
14:34:06 7 under our agreements go to that argument. So we want to
14:34:09 8 show the entire relationship between the parties.

14:34:11 9 This is also in ARM's statement of facts and
14:34:15 10 issues for trial. They talk about the long-standing
14:34:18 11 relationship and the interaction, both sides have referenced
14:34:23 12 the fact that Qualcomm is the largest customer of ARM, and
14:34:26 13 the TLA payments are evidence of the depth of the
14:34:31 14 relationship between the parties and the ongoing performance
14:34:33 15 by Qualcomm. We think they're directly relevant to issues
14:34:37 16 that are in the case.

14:34:39 17 In addition as we said in our brief, there will
14:34:43 18 be evidence regarding the calculations that were done by ARM
14:34:50 19 about the difference between the AIA and the TLA amounts,
14:34:55 20 the royalty assessment. In fact, on the very day that ARM
14:34:59 21 learned about the acquisition, there are documents showing
14:35:02 22 that they went and immediately did this calculation.

14:35:05 23 We are going to be talking at trial about the
14:35:08 24 work that's done by NuVia and by Qualcomm to develop these
14:35:12 25 products and innovate. The difference in rates between the

14:35:15 1 TLA and the ALA is evidence of that because under the TLA,
14:35:19 2 as Mr. Olson said, products are provided that are more fully
14:35:24 3 formed. And so what a TLA licensee gets versus what an ARM
14:35:30 4 -- sorry, an ALA licensee gets are going to be at issue in
14:35:34 5 the case and we're going to be talking a lot about the
14:35:38 6 innovative work that was done by NuVia and Qualcomm to
14:35:41 7 develop these products and build these products under the
14:35:44 8 ALA, so the difference in the ratings to that as well, and
14:35:48 9 it does demonstrate the difference in the value of what is
14:35:51 10 obtained by a licensee under these different agreements.

14:35:54 11 Also I would point out, Your Honor, that in the
14:36:01 12 pretrial order at Exhibit 13, where ARM set forth its
14:36:06 13 intended proofs, it talks about again in paragraph 41 the
14:36:10 14 long-standing business relationships that it has with its
14:36:14 15 licensee and how trust and integrity are an important part
14:36:18 16 of that.

14:36:18 17 In paragraph 114 it talks about the impact of
14:36:21 18 relationships with licensees. In paragraph 115 and
14:36:26 19 elsewhere, it talks about the ecosystem, it calls it the
14:36:31 20 ecosystem of the ARM-based devices. That ecosystem includes
14:36:35 21 all of the products that are under the Qualcomm TLA. And
14:36:38 22 there repeated references in the record --

14:36:42 23 THE COURT: I think I have heard enough. All
14:36:44 24 right. So I have ARM's motion in limine number 3. It's
14:36:49 25 going to be granted in part and denied in part. Granted to

14:36:52 1 the extent that the amount of money already paid under the
14:36:57 2 ALA for products other than the current products at issue, I
14:37:00 3 think that is not relevant. Denied as to the different
14:37:03 4 royalty rates which appear to be relevant to defendants'
14:37:06 5 defense that ARM wrongfully withheld consent to transfer the
14:37:10 6 NuVia ALA to Qualcomm because ARM was dissatisfied with the
14:37:14 7 lower royalty rate it would receive.

14:37:16 8 All right.

14:37:17 9 MS. NYARADY: Thank you, Your Honor.

14:37:18 10 THE COURT: Now we get to Qualcomm -- maybe this
14:37:20 11 is you, Ms. Nyrady, Qualcomm's motion in limine number 1.

14:37:26 12 MR. BLUMENFELD: With the Court's permission,
14:37:28 13 Mr. Braly is going to address that.

14:37:31 14 THE COURT: All right. Thank you.

14:37:34 15 MR. BRALY: Good afternoon, Your Honor. Jacob
14:37:36 16 Braly on behalf of defendants.

14:37:38 17 What we seek here in this motion in limine is to
14:37:41 18 exclude testimony and evidence regarding the specific dollar
14:37:45 19 amount of proceeds that the NuVia founders received during
14:37:49 20 the NuVia acquisition. This evidence is irrelevant to the
14:37:54 21 claims at issue, and any potential relevance is
14:37:59 22 substantially outweighed by the likelihood of prejudice or
14:38:02 23 bias from a jury under 403.

14:38:05 24 To be clear, we are not seeking to exclude
14:38:08 25 evidence related to the acquisition price, to the fact that

14:38:11 1 the founders received compensation in the acquisition, or to
14:38:15 2 the fact that there is a bonus structure laid out and a term
14:38:20 3 sheet that was signed as part of the acquisition. All of
14:38:23 4 the reasons that ARM provides in their response are
14:38:27 5 satisfied without disclosing the actual proceeds that were
14:38:31 6 made by the NuVia founders who are nonparties to this
14:38:36 7 action. And including that information and introducing that
14:38:39 8 evidence into this case would only seek to inflame the jury.

14:38:42 9 To also address one of the issues that's raised
14:38:45 10 in ARM's response, they question whether a particular
14:38:50 11 milestone -- I think the last pending milestone payment was
14:38:53 12 paid out based on --

14:38:55 13 THE COURT: How much money are we talking about?
14:38:59 14 MR. BRALY: It is approximately 80 to \$100
14:39:03 15 million, Your Honor. Mr. Gulati in Exhibit 1A to our
14:39:08 16 opening brief provides a breakdown of the amount on pages
14:39:11 17 137 to 138, and describes both the stock transfer as well as
14:39:17 18 a cash payment and then, of course, there are milestone
14:39:20 19 payments as well.

14:39:22 20 THE COURT: Okay. Let me hear from the
14:39:24 21 plaintiff.

14:39:25 22 MS. DURIE: Thank you, Your Honor. Daralyn
14:39:30 23 Durie for ARM.

14:39:31 24 Evidence of the amount of money that the
14:39:34 25 founders stood to make by virtue of the acquisition is

14:39:39 1 highly relevant to their motivation for disregarding their
14:39:45 2 contractual obligations. And closing that transaction
14:39:50 3 notwithstanding the consent requirement and failing to get
14:39:54 4 consent, and then using the ARM technology that had been
14:40:01 5 developed at NuVia in order to speed product development at
14:40:06 6 Qualcomm and get the milestone payments that had been
14:40:10 7 promised to them. And I think the case law is quite clear
14:40:14 8 that evidence of the amount of money that a party stands to
14:40:19 9 gain is evidence of bias. And it shows their motivation for
14:40:24 10 engaging in the specific conduct that is at issue in this
14:40:28 11 case.

14:40:28 12 THE COURT: All right. I think I have heard
14:40:30 13 enough.

14:40:30 14 MS. DURIE: Thank you.

14:40:31 15 THE COURT: I am going to deny the motion. If
14:40:38 16 defendants -- I've already permitted defendants to use the
14:40:40 17 royalty rate to show motive and bias from plaintiff's part,
14:40:45 18 then plaintiff can also use Qualcomm's buyout figures to
14:40:49 19 show motive or bias of the NuVia folks.

14:40:53 20 Okay. Qualcomm's motion in limine number 2,
14:40:58 21 defendants seek to preclude ARM from making arguments about
14:41:01 22 its ALA program, ALAs generally unless it produces all of
14:41:07 23 its third-party ALAs without redactions. We had a little
14:41:11 24 bit of a discussion about this at the last hearing. I'm not
14:41:16 25 sure if I screwed that up. So I do need to understand

14:41:19 1 what's going on because plaintiff now seems to be saying
14:41:26 2 look, we're not going to use those, which I appreciate
14:41:30 3 because you didn't produce them, you shouldn't be able to
14:41:33 4 use them.

14:41:34 5 But what I'm not sure happens is instead it
14:41:37 6 seems like you're saying we're just going to have people
14:41:40 7 testify. Well, what are you going to have them testify?
14:41:43 8 Are you going to have them testify about things that they
14:41:45 9 need those documents to cross-examine them on, or are you
14:41:48 10 going to testify about stuff that you've already produced
14:41:52 11 discovery on? So that is what I need some help on.

14:41:55 12 MS. DURIE: Thank you. And the answer, Your
14:41:57 13 Honor, is the latter. So we will have witnesses describe at
14:42:03 14 a high level the ALA program, and that there are ALA's with
14:42:11 15 a number of different companies. That I think is not a
14:42:13 16 contested fact. We do not intend to put in any evidence
14:42:17 17 about the specific terms of specific agreements that would
14:42:22 18 implicate in any way any information that was redacted from
14:42:27 19 those agreements.

14:42:28 20 The only -- the reason that this evidence is
14:42:32 21 relevant is to show -- in part to show harm. Obviously the
14:42:38 22 details of that harm are for the remedies phase for a
14:42:43 23 specific performance, but Qualcomm has taken the position
14:42:46 24 that we need to show as an element of the breach of contract
14:42:50 25 claim harm from the breach.

14:42:51 1 THE COURT: And I agree with that.

14:42:52 2 MS. DURIE: Right. And so we intend to have

14:42:56 3 testimony both that ARM is harmed by the unlicensed use of

14:43:00 4 our technology by Qualcomm and not being compensated for

14:43:06 5 that use in the way that they believe they should have been,

14:43:10 6 and that there is harm generally to ARM from the unlicensed

14:43:15 7 use of its technology, this is not the only ALA.

14:43:19 8 THE COURT: But I need to know specifically what

14:43:23 9 you suggest someone is going to testify about because if

14:43:25 10 that person is going to say well, gosh, it affects our

14:43:30 11 ability to negotiate good prices on other ALA's, that seems

14:43:34 12 like something you should have produced.

14:43:36 13 MS. DURIE: I understand. We are not going to

14:43:39 14 have witness testimony that there has been any past

14:43:44 15 impairment in our ability to negotiate specific ALA terms

14:43:49 16 including rates. We do think that to the extent that

14:43:55 17 Qualcomm's conduct was blessed here and that Qualcomm was

14:44:00 18 ultimately permitted to use unlicensed technology, that that

14:44:06 19 would have negative consequences going forward, but we're

14:44:10 20 not going to put in any testimony --

14:44:13 21 THE COURT: How is that showing damages? That's

14:44:16 22 showing speculative stuff for the future. How is that

14:44:19 23 showing that you have been damaged by the breach?

14:44:22 24 MS. DURIE: I think there is exigent harm to the

14:44:26 25 licensing ecosystem, but I think for purposes of showing

14:44:30 1 harm as an element of the breach of contract claim, the fact
14:44:34 2 that our technology is being used in an unlicensed fashion
14:44:39 3 without compensation, without in our view adequate
14:44:42 4 compensation --

14:44:43 5 THE COURT: That one I understood. I understood
14:44:45 6 that one. I don't understand you saying and now we're going
14:44:50 7 to put someone up and he's not going to say we've already
14:44:53 8 been harmed because we couldn't negotiate better deals or
14:44:57 9 people were like you let Qualcomm get away with it, so we
14:45:03 10 can get away with paying less or something, you're not going
14:45:06 11 to do that and instead you want him to say well, it may
14:45:09 12 happen in the future, that doesn't seem like harm for a
14:45:12 13 breach of contract. That seems kind of speculative and
14:45:18 14 future.

14:45:18 15 MS. DURIE: I don't disagree that it is about
14:45:20 16 the future. It is about why this lawsuit is important to
14:45:23 17 ARM, it is about why ARM made the decision which was as I
14:45:28 18 understand it literally unprecedented to sue one of its
14:45:32 19 licensees for the unlicensed use of its technology.

14:45:37 20 I agree that is not what we will be relying on,
14:45:40 21 it is the predicate for a determination of harm as an
14:45:44 22 element of a breach of contract claim, I believe that is the
14:45:47 23 harm that will be specific from the unlicensed use of this
14:45:50 24 technology.

14:45:50 25 THE COURT: Let me ask you a question because it

14:45:53 1 sort of your explanation kind of raised this which is let's
14:45:59 2 say you go before the jury and the jury says there was a
14:46:04 3 breach, and the damage, there was damage and loss of
14:46:10 4 reputation, something like that. Okay? Something that's
14:46:13 5 damages, but that is sufficient to show damages for purposes
14:46:18 6 of making out a breach of contract claim. And then you come
14:46:22 7 to me and you've already just said part of your damage may
14:46:27 8 be that you're not compensated adequately for the breach,
14:46:32 9 for the use of our technology, so it's using your technology
14:46:36 10 but not compensating you adequately.

14:46:39 11 So let's just say after I hear you out on that I
14:46:42 12 say it doesn't seem to me that there is no adequate monetary
14:46:47 13 relief. What happens because there has been no request for
14:46:53 14 damages, and if I don't give you specific performance but
14:46:56 15 there is a breach, where are we?

14:46:59 16 MS. DURIE: So the Court has the power in equity
14:47:04 17 to make awards incidental to an equitable request for
14:47:10 18 specific performance.

14:47:14 19 THE COURT: Did you ask for that in the pretrial
14:47:16 20 order?

14:47:16 21 MS. DURIE: We asked for that in the pleadings
14:47:18 22 and I believe it is in the pretrial order as well.

14:47:21 23 I do want to make clear that what I have been
14:47:24 24 talking about is harm as an element of a breach of contract
14:47:27 25 claim as distinct from damages.

14:47:29 1 THE COURT: I understand. But if you're going
14:47:31 2 to convince me -- if you want to tell the jury that our harm
14:47:36 3 is that we haven't been adequately compensated, I can't
14:47:41 4 pretend that I didn't hear that. Compensation sounds
14:47:44 5 money-ish.

14:47:45 6 MS. DURIE: I understand, and that is an element
14:47:46 7 of harm and I understand Your Honor's point. So the answer
14:47:49 8 to your question I think is remedies that are incidental to
14:47:54 9 specific performance.

14:47:55 10 THE COURT: All right.

14:47:56 11 MS. DURIE: Thank you.

14:47:56 12 THE COURT: Mr. Blumenfeld, did we help with
14:47:59 13 some of that? So they're not going to put in ALA's, they're
14:48:04 14 not going to testify that anything -- that there was
14:48:10 15 anything in the past where they -- their negotiations or
14:48:13 16 their ALA's were somehow impacted, and that's damages. I'm
14:48:21 17 not sure I'm going to let them put in something speculative
14:48:25 18 about the future, while maybe this will happen, maybe it
14:48:29 19 won't. So that leaves us with an argument that they're not
14:48:35 20 being adequately compensated for their -- for the alleged
14:48:41 21 breach. That seems like it's outside of this motion in
14:48:45 22 limine. So what is left of the motion in limine that I need
14:48:49 23 to address?

14:48:51 24 MR. BLUMENFELD: So a couple of things, Your
14:48:53 25 Honor, and I want to swing back to the damages issue that

14:48:55 1 you raised with Ms. Durie. I don't think it's correct that
14:49:02 2 all they intend to do is call some executives and say oh,
14:49:06 3 there may be some harm to us in the future which Your Honor
14:49:11 4 has said you haven't decided whether you will let them do
14:49:15 5 that or not. This came up a little bit during summary
14:49:18 6 judgment where they put in a declaration from two of the
14:49:20 7 executives. In fact, if you read their MIL response it
14:49:24 8 specifically says --

14:49:25 9 THE COURT: That caught my attention in the MIL,
14:49:29 10 we're going to have somebody testify and I'm like okay,
14:49:32 11 about what.

14:49:33 12 MR. BLUMENFELD: It says about royalties that
14:49:36 13 have been decreased. That doesn't sound like the future,
14:49:38 14 that sounds like --

14:49:39 15 THE COURT: I understand, but we've now had a
14:49:44 16 representation that suggest that's not going to happen,
14:49:46 17 unless the royalties that have been decreased means that
14:49:49 18 they're not being paid, they're Qualcomm or NuVia royalties
14:49:55 19 that they're not getting paid.

14:49:56 20 MR. BLUMENFELD: Right. If I could hand up one
14:49:59 21 of the declarations they put in, this is a big part of our
14:50:02 22 concern. It's from Williamson. It came in in August, we
14:50:06 23 objected to it as part of the summary judgment proceedings
14:50:09 24 because it is speculative, and also because it does disclose
14:50:25 25 things or argues things that we didn't get discovery of

14:50:29 1 because we didn't get the ALA's in for other reasons. But
14:50:33 2 if you look at Mr. Williamson's declaration, and he is
14:50:38 3 listed as a trial witness, so he's senior vice-president and
14:50:42 4 general manager, and he says in paragraph 6 that the
14:50:51 5 unlicensed use of ARM's technology has caused multiple harms
14:50:55 6 to ARM. And then he goes on to explain that, and in
14:50:59 7 paragraph 7, he says based on my experience at ARM and
14:51:03 8 marketing and business roles since 2015, the industry's
14:51:08 9 perception of ARM's reputation and its ability to protect
14:51:12 10 its intellectual property impacts ARM's contracts with its
14:51:15 11 licensees, for example, it affects the terms that ARM's
14:51:19 12 licensees are willing to accept, their proposals during
14:51:23 13 negotiations, their willingness to comply with those issues.
14:51:26 14 Terms that may be impacted include that products are
14:51:29 15 licensed financial terms, scope of license technology, I
14:51:34 16 don't know how I'm supposed to be able to cross-examine him
14:51:37 17 on these things happen when I'm talking to our licensees, by
14:51:41 18 the way, you don't have the licenses so you can't use them
14:51:44 19 to cross-examine me --

14:51:47 20 THE COURT: Hold on. Let me ask. Ms. Durie, I
14:51:51 21 would have thought based on our representations you weren't
14:51:53 22 planning to have him do that because I kind of agree,
14:51:57 23 Mr. Blumenfeld can't just say --

14:52:00 24 MS. DURIE: That is correct, we are not going to
14:52:02 25 say that there have been any such impacts to date.

14:52:06 1 THE COURT: But you want him to say but there
14:52:11 2 will be.

14:52:12 3 MS. DURIE: I would like for him to be able to
14:52:15 4 say that one of the reasons that ARM brought this case is
14:52:20 5 because its licensee ecosystem is extremely important to it
14:52:28 6 and it is very important to ARM as an IP licensing entity
14:52:32 7 that its licensees respect its intellectual property. And
14:52:38 8 that in ARM's view, if Qualcomm were able to use ARM
14:52:42 9 technology in an unlicensed fashion, that could have very
14:52:46 10 severe downstream consequences for ARM. I don't expect
14:52:50 11 anyone to spend a long time belaboring the point.

14:52:53 12 I think at that high level, they are -- Qualcomm
14:52:57 13 has said that they are going to try to suggest that ARM's
14:53:01 14 reasons for refusing to consent and bringing the case was
14:53:06 15 because it wanted to get rid of the Qualcomm ALA. Our
14:53:10 16 response to that is to say no, that is not true, the reason
14:53:14 17 that we are here is not because we want to get rid of the
14:53:17 18 Qualcomm ALA, the reason that we are here is because
14:53:20 19 Qualcomm is using our technology in an unlicensed fashion
14:53:23 20 and that is important to us.

14:53:24 21 But we don't intend to belabor the point and we
14:53:28 22 do not intend to make any argument that there has been any
14:53:31 23 specific effect in any specific license agreement that would
14:53:34 24 give rise to the need to cross-examine on that.

14:53:38 25 THE COURT: So with that --

14:53:40 1 MR. BLUMENFELD: Your Honor, if you go on to --
14:53:42 2 I want to respond also to her point about motivation, how it
14:53:46 3 is their motivation. The suit gets in after, what Mr. Olson
14:53:50 4 said, after our motivation.

14:53:52 5 THE COURT: I know. Well, you are going to talk
14:53:55 6 about their motivation to sue, that's all I heard over here
14:53:58 7 is they're suing us because they want more money so I can
14:54:02 8 sort of see why they get to respond and say no, we're not
14:54:05 9 suing them because we want more money, we're suing them
14:54:09 10 because this is harmful to our business model.

14:54:12 11 MR. BLUMENFELD: Well, we will get to that
14:54:15 12 undoubtedly when things come up at trial, but on the
14:54:18 13 specific things that Ms. Durie said about what they're going
14:54:22 14 to do, if you turn to paragraph 11 and then paragraph 13 of
14:54:27 15 Mr. Williamson's declaration, he says he --

14:54:30 16 THE COURT: Yeah, let's just check before you
14:54:33 17 tell me, are you going -- this seems like past stuff, since
14:54:38 18 June people have contacted me and I have been damaged. So
14:54:43 19 we need -- you're not going to put this in.

14:54:46 20 MS. DURIE: That's correct, Your Honor.

14:54:47 21 THE COURT: Okay. So that was paragraph 11.

14:54:50 22 MS. DURIE: Paragraph 11, that's right.

14:54:52 23 THE COURT: And then --

14:54:53 24 MS. DURIE: I want to be clear, we're talking
14:54:55 25 about the phase in front of the jury, obviously specific

14:54:58 1 performance is a separate question and we'll address that at
14:55:01 2 a separate time in front of Your Honor.

14:55:04 3 THE COURT: We can do that, I'm just saying the
14:55:06 4 extent that you want him to say I have been contacted by
14:55:09 5 people and our agreements are suffering, I would have
14:55:14 6 expected that all of that underlying stuff be produced, and
14:55:19 7 that you're not just going to have him get up there and say
14:55:24 8 it and leave Mr. Blumenfeld to say I don't know if that's
14:55:28 9 true or not. So you can ask again to put it in if there is
14:55:33 10 a bench trial phase, but I still in a bench trial require
14:55:40 11 you to disclose stuff during discovery.

14:55:43 12 All right. What about paragraph 12, did you
14:55:46 13 have a problem with paragraph 12, Mr. Blumenfeld? This is
14:55:51 14 -- that's different, that's Qualcomm's position as to what's
14:55:54 15 licensed.

14:55:55 16 MR. BLUMENFELD: It's 13, that's the other
14:55:56 17 issue. But on this entire subject, I don't -- so they put
14:56:02 18 in a declaration saying I have talked to our partners, I
14:56:06 19 have talked to our licensees, here is what I have learned
14:56:09 20 from them. They say that in the declaration. They're not
14:56:12 21 going to do that at trial. I don't know how he can get on
14:56:15 22 the stand and just say but this is going to happen.

14:56:18 23 THE COURT: And I haven't quite gotten through
14:56:23 24 that. I understand that concern. I understand that
14:56:26 25 concern. And I'm not -- but I guess what I'm thinking is I

14:56:33 1 need to understand more of what he's going to say, right?
14:56:37 2 Like, why can't he get up there and say this is our whole
14:56:41 3 business model, our business model is we licensed
14:56:45 4 technology, and you know, if you're going to be out there --
14:56:47 5 and we think we have great technology. But it's important
14:56:50 6 to us that people respect our licenses because if people
14:56:54 7 don't respect our licenses, our business model is not worth
14:56:57 8 the paper that it's written on. Right?

14:56:59 9 MS. DURIE: Right.

14:56:59 10 THE COURT: And then he can say and our
14:57:05 11 perception is that Qualcomm or NuVia, or I know there is two
14:57:10 12 different parties, I don't know who I'm talking about at
14:57:12 13 this moment, but you don't have to tell me there is two
14:57:16 14 different parties, whoever is not respecting our licenses,
14:57:19 15 probably both, right, neither of them respected the license
14:57:22 16 according to the plaintiff. So that seems okay to me and
14:57:26 17 that's not speculative damages, that's saying it's important
14:57:30 18 to us that people respect it, and it's important to our
14:57:34 19 business model that people respect it, and they're not
14:57:37 20 respecting it. And you can say well, you don't have any
14:57:40 21 evidence that it actually had an impact, but why can't he
14:57:44 22 get up there and say, come on, we're a licensing company,
14:57:47 23 all we do is enter agreements and if we say everybody can
14:57:51 24 just kind of pooh pooh our agreements, you know, it doesn't
14:57:55 25 -- the jury can look at that and be like well, that sounds

14:57:58 1 **bad.**

14:58:00 2 MR. BLUMENFELD: So here is the problem with
14:58:02 3 that, and it goes to the question Your Honor raised with
14:58:05 4 Ms. Durie. How do I cross-examine him? Because, for
14:58:09 5 example, we know that they've entered into other licenses
14:58:13 6 since the termination of the NuVia license. We all know
14:58:17 7 about Apple and there are others they've entered into since
14:58:21 8 then. We don't have them, or we have them in redacted forms
14:58:26 9 that we don't know what the terms are. We went through that
14:58:30 10 back in March with the Google licenses where the terms are
14:58:33 11 totally redacted. So if he gets on the stand and says this
14:58:37 12 is going to affect our licensing program, it's going to
14:58:40 13 affect our ability to collect royalties, it's going to
14:58:43 14 affect people's willingness to take a license and all I can
14:58:46 15 say is well, people took licenses, right, and I don't have
14:58:51 16 those licenses and I can't cross-examine him on whether the
14:58:55 17 harm is real or whether it's just something he's making up
14:58:59 18 for the jury.

14:58:59 19 THE COURT: Let me ask Ms. Durie on that
14:59:02 20 specific point because that one seems --

14:59:04 21 MS. DURIE: So we're not arguing that there has
14:59:06 22 been any affect on any exigent license agreements because
14:59:11 23 the harm hasn't happened yet --

14:59:13 24 THE COURT: Hold on, hold on. If he's going to
14:59:16 25 get up there and say well, it's going to harm us in the

14:59:19 1 future and Mr. Blumenfeld could if he had the agreement say
14:59:23 2 good of you to say, but by the way, since this all happened,
14:59:28 3 you have entered into 89 license agreements and, in fact,
14:59:30 4 you got better terms than you ever had before, that's a
14:59:34 5 pretty good cross of him saying oh, it's going to now hurt
14:59:38 6 us.

14:59:39 7 MS. DURIE: So I disagree --

14:59:41 8 THE COURT: Well, I don't --

14:59:43 9 MS. DURIE: But the distinction, I want to draw
14:59:44 10 the distinction between what will happen as a consequence of
14:59:48 11 Qualcomm being allowed to use technology in an unlicensed
14:59:53 12 way without consequences --

14:59:55 13 THE COURT: Yes. According to you -- hold on.

14:59:58 14 MS. DURIE: Yes.

14:59:58 15 THE COURT: According to you, Qualcomm has been
15:00:01 16 allowed to do this.

15:00:03 17 MS. DURIE: Not yet. We're in court litigating
15:00:07 18 over that very issue. They have not gotten away with it.
15:00:11 19 They make -- if they were to get away with it, if this were
15:00:15 20 to not have a consequence, we would be harmed. But we are
15:00:18 21 not saying -- there has been no --

15:00:21 22 THE COURT: Now you're getting super
15:00:24 23 speculative. So the jury has to now assume that the damage
15:00:28 24 is that they find that there is a breach, but they can't
15:00:32 25 find that there is a breach unless there is damage. So I

15:00:35 1 can't -- that seemed wrong to me.

15:00:37 2 MS. DURIE: So let me be clear. The allegation
15:00:40 3 of harm for purposes of whether there was a breach is that
15:00:43 4 they are using our unlicensed technology and they are not
15:00:48 5 paying for it. That is harm. And that suffices to show
15:00:54 6 harm for purposes of a breach.

15:00:56 7 THE COURT: You know what, that's all I'm going
15:00:59 8 to let him say at trial. He cannot say -- no, he cannot say
15:01:02 9 and in the future, this is going to cause us problems if the
15:01:06 10 jury finds that there was a breach and this can all go and
15:01:11 11 they are allow to get away with it. He cannot say it.
15:01:14 12 Okay? He cannot say it. You can stop arguing it because
15:01:20 13 you did not produce -- you did not produce information that
15:01:26 14 would allow the defendants to fairly cross-examine your
15:01:31 15 witnesses because I get it, you're saying well, they didn't
15:01:36 16 get away with it until the jury finds they got away with it.
15:01:40 17 The fact is they're doing it now. There is no -- no, he
15:01:43 18 can't -- and so one, no, you didn't produce the documents.
15:01:47 19 Two, no, it seems awfully speculative to say we think that
15:01:52 20 at some point if the jury finds that there wasn't -- I don't
15:01:57 21 even know if the jury finds there was a breach or there
15:02:00 22 wasn't a breach that we're going to be harmed.

15:02:02 23 MS. DURIE: It's not the jury verdict. Let me
15:02:05 24 very be very clear, it's why we brought the lawsuit. If we
15:02:09 25 had allowed this conduct to go unchallenged, if we had

15:02:12 1 allowed Qualcomm to use our IP in an unlicensed fashion and
15:02:16 2 not take an action, that would have threatened our
15:02:20 3 ecosystem, the reason we brought --

15:02:22 4 THE COURT: There is a difference between saying
15:02:24 5 it will threaten our ecosystem and saying, and what that
15:02:28 6 means is we are going to be harmed in the future by people,
15:02:35 7 you know, everybody -- no one is going to respect our
15:02:39 8 licenses. It's one thing if he gets up there and says this
15:02:42 9 is our business model, we need people to respect our
15:02:46 10 licenses, they're not respecting our licenses, okay, I don't
15:02:50 11 know exactly what that establishes, but the jury I suppose
15:02:54 12 could fairly draw an inference from that. It's a very
15:02:58 13 different thing for him to say and by the way, we will be
15:03:01 14 harmed in the future, or we may be harmed in the future if
15:03:06 15 this is allowed.

15:03:07 16 MS. DURIE: May I just say in response to the
15:03:09 17 attack on our motive for bringing the lawsuit, which
15:03:13 18 Qualcomm intends to put at issue by saying we refused to
15:03:17 19 consent to try to get out from under the Qualcomm ALA, we
15:03:20 20 would like our witness to be able to say that's not why
15:03:23 21 we're here, the reason why we're here, why we brought the
15:03:27 22 lawsuit and why we are insisting on our rights is because we
15:03:32 23 are a licensing shop. If our technology is used in an
15:03:35 24 unlicensed fashion, that threatens our entire business model
15:03:39 25 and we're very concerned about what the consequences of that

15:03:43 1 would be. We're not saying we're harmed by that --

15:03:46 2 THE COURT: Yes, but the problem I have is --

15:03:49 3 and you can say that I'm talking about something different,

15:03:52 4 but I still think it's fair within the scope of

15:03:55 5 cross-examination, if your witness gets up there and says

15:03:58 6 all hell is going to break loose if people don't respect our

15:04:02 7 licenses, our business model is not worth the paper it's

15:04:05 8 written on, and Mr. Blumenfeld or Ms. Dunn or Ms. Nyrady or

15:04:10 9 whoever can't get up and say well, wait a second, everybody

15:04:15 10 knows that according to you, Qualcomm has not been

15:04:20 11 respecting our technology and has just been using it as you

15:04:22 12 say in an unlicensed manner and the sky has not fallen in,

15:04:28 13 in fact all of this other stuff has happened, the problem is

15:04:32 14 he can't say that or they can't say that because you didn't

15:04:35 15 produce the documents.

15:04:36 16 MS. DURIE: I would think, Your Honor, we could

15:04:38 17 arrive at a stipulation to solve that problem because that

15:04:40 18 is not the argument that we are making. We are saying if we

15:04:43 19 had not enforced our rights and just sat on the sidelines

15:04:48 20 and didn't take action to protect our intellectual property

15:04:52 21 and allowed the unlicensed use of our IP without

15:04:57 22 consequence, that is what would threaten our entire model,

15:05:00 23 not being here pursuing this litigation, but sitting on the

15:05:03 24 sidelines and not taking action.

15:05:05 25 If Qualcomm wants to cross-examine our witnesses

15:05:09 1 --

15:05:09 2 THE COURT: How are they supposed to say we
15:05:11 3 don't believe you, that's not true?

15:05:14 4 MS. DURIE: I think we could work out a
15:05:15 5 stipulation. If their goal is to be able to establish that
15:05:19 6 we are not contending there has been any such harm with
15:05:23 7 respect to the terms of license agreements that we were able
15:05:27 8 to negotiate in view of the fact that we did file a lawsuit,
15:05:31 9 we have no problem with that, and I think we could work out
15:05:34 10 a stipulation to that effect.

15:05:36 11 THE COURT: All right. This is what I am going
15:05:37 12 to do. You can't use the ALA. It sounds like you don't
15:05:41 13 want to use the ALA. And you can't use anything that's
15:05:44 14 happened to date, and it doesn't sound like you want to use
15:05:47 15 anything that's happened to date. So that I will rule on.
15:05:55 16 Whatever happens, see if you can come up with a stipulation
15:05:57 17 that will allow you to deal with it. If not, you can use
15:06:02 18 some of your trial time to argue the rest of this, whatever
15:06:05 19 is left of this motion to me.

15:06:07 20 MS. DURIE: Understood. Thank you, Your Honor.

15:06:09 21 THE COURT: But I understood the motion to be
15:06:14 22 that defendants seek to preclude ARM from making argument
15:06:17 23 about its ALA product program and so I guess to the extent
15:06:21 24 that we're talking about not specific agreements but the
15:06:26 25 program, then I -- let me know what's left of that motion.

15:06:34 1 MR. BLUMENFELD: I'm not sure, Your Honor, that
15:06:37 2 there is anything left that we need to deal with today. We
15:06:40 3 may well get into the issue of them putting Mr. Williamson,
15:06:44 4 Mr. Abby, Mr. Haas, their witnesses on to talk about -- to
15:06:49 5 create an impression that there is a parade of horribles
15:06:53 6 that are going to happen and if that does --

15:06:54 7 THE COURT: I understand. I understand. And
15:06:56 8 I'm not in any way precluding you from objecting to that, or
15:07:01 9 from raising that before the witnesses get on the stand and
15:07:04 10 asking for a proffer on what they're going to say on that so
15:07:08 11 we can address it.

15:07:09 12 MR. BLUMENFELD: Thank you.

15:07:09 13 If I can respond to the colloquy that you had on
15:07:12 14 damages, this is kind of an interesting issue for us. Back
15:07:15 15 when we were before you in March, you asked them whether
15:07:18 16 they were asserting a damages claim and they said no. They
15:07:23 17 left themselves open to possibly doing it later. They've
15:07:26 18 never given us a damages expert report. They've never given
15:07:29 19 us a disclosure of a damages theory. They haven't put --

15:07:33 20 THE COURT: How scary it must be that they want
15:07:37 21 me to figure it out.

15:07:39 22 MR. BLUMENFELD: But if you go to the pretrial
15:07:41 23 order, I don't know if you have it in front of you.

15:07:44 24 THE COURT: I can pull it up. Give me a second.

15:07:49 25 MR. BLUMENFELD: It's Exhibit 13 to the pretrial

15:07:51 1 order. It's in the pretrial order in a number of places.

15:08:02 2 THE COURT: Okay.

15:08:03 3 MR. BLUMENFELD: Starting at the bottom of

15:08:05 4 page 16, paragraph 120(b).

15:08:07 5 THE COURT: Hold on, my exhibit -- I don't know
15:08:11 6 what this is.

15:08:15 7 MR. BLUMENFELD: It's Exhibit 13 which is
15:08:17 8 plaintiff's statement of intended proof.

15:08:31 9 THE COURT: Okay. What paragraph?

15:08:33 10 MR. BLUMENFELD: At the very bottom of the page
15:08:34 11 they list the relief they're seeking. And paragraph B says

15:08:39 12 --

15:08:39 13 THE COURT: I'm sorry, which page?

15:08:41 14 MR. BLUMENFELD: Page 16. Sorry, Your Honor.

15:08:44 15 Says an order requiring defendants to pay royalties, an
15:08:50 16 accounting pre and post-trial judgment interest,
15:08:53 17 supplemental damages, incidental damages and/or attorney's
15:08:58 18 fees and costs and other monetary compensation as an
15:09:02 19 equitable remedy. And they have never disclosed this.

15:09:06 20 Their position they've always taken is it can't be
15:09:09 21 calculated. Now they're saying oh, we're going to seek
15:09:13 22 damages, including I don't know what other monetary
15:09:16 23 compensation means. If you look up damages in the legal
15:09:20 24 dictionary, it probably says monetary compensation. If they
15:09:24 25 were going to put forth some kind of a damages theory, now I

15:09:29 1 don't think they have a right to do it later, we may end up
15:09:33 2 briefing that, but we're going to have a trial
15:09:36 3 December 16th, I would have thought that was the time to do
15:09:38 4 it and they didn't do it. I don't think they get to come in
15:09:41 5 and say oh, if we win, then we'll put in the evidence that
15:09:46 6 we didn't give you before the jury trial. I wanted to bring
15:09:50 7 that to your attention, they're not going to try to put in a
15:09:53 8 damages case on December 16th --

15:09:55 9 THE COURT: No. And presumably when I look at
15:09:58 10 any equitable relief that's requested I can either see what
15:10:03 11 they're asking you to do and come up with a number, notwithstanding
15:10:07 12 that they told me monetary damages are not --
15:10:11 13 or I can say that it's been waived or some other equitable
15:10:16 14 reason I don't have to do that at their request because of
15:10:19 15 the positions that they have taken in this case.

15:10:23 16 But those are all issues that I don't think
15:10:25 17 we're going to address today.

15:10:27 18 MR. BLUMENFELD: And we will undoubtedly be
15:10:29 19 taking the position that they can't raise that.

15:10:34 20 THE COURT: Okay.

15:10:35 21 MS. DUNN: Your Honor, on the list of things
15:10:38 22 that can't be addressed today, but based on the
15:10:42 23 representation of the plaintiffs of what they will not be
15:10:46 24 arguing with respect to harm and their acknowledgment that
15:10:50 25 harm is an element, I don't know that just alleging a

15:10:54 1 breach, which is basically what they're saying they're going
15:10:58 2 to do and having that suffice to harm is legally sufficient.

15:11:02 3 THE COURT: Well, I think that there is enough
15:11:05 4 here to allow me to let them go to a jury and assert that
15:11:09 5 they have suffered harm. So you're not getting summary
15:11:14 6 judgment today. I understand what you're saying, but I
15:11:17 7 think in terms of saying things like reputational harm or
15:11:22 8 whatever, that there is enough that they can go to a jury.
15:11:25 9 So that's where I am on that.

15:11:27 10 MS. DUNN: Okay. I just want to make sure I put
15:11:29 11 the argument on the record because I don't know that under
15:11:32 12 the case law that that is true.

15:11:35 13 THE COURT: Then appeal my denial of the summary
15:11:38 14 judgment that you just made right here.

15:11:41 15 Okay. Now, other issues in the pretrial order.
15:11:48 16 I think that's all the motions in limine and Daubert --
15:11:51 17 Daubert's I haven't given you my order yet, the one I had a
15:11:56 18 question on.

15:11:56 19 Okay. So then other issues. The pending
15:12:10 20 motions, I don't think there are any pending motions here
15:12:14 21 except for the Daubert's, which I'll get you out soon.
15:12:20 22 Summary judgment I have resolved. I'm denying it to the
15:12:24 23 extent that you don't think I already have. And there was a
15:12:30 24 motion to compel or something, and I'm not granting that
15:12:37 25 either.

15:12:37 1 Okay. Paragraph 11, settlement efforts. I know
15:12:44 2 that I ordered you all to engage in discussions. I know
15:12:50 3 it's not time yet for you to get back to me, but where are
15:12:54 4 we?

15:12:56 5 MR. OLSON: Your Honor, the CEOs of ARM and
15:13:00 6 Qualcomm met on November 14th for as I understand it about
15:13:07 7 two hours with the general counsels as well. Following that
15:13:13 8 executives are having discussions this week and we will be
15:13:17 9 more than happy to provide a follow-up on November 27th as
15:13:23 10 previously ordered. I don't have more either as to
15:13:27 11 substance or otherwise that I can say.

15:13:29 12 THE COURT: That's okay. I don't need the
15:13:31 13 substance. Where did they meet?

15:13:34 14 MR. OLSON: They met in Palo Alto, actually in
15:13:39 15 Morrison Foerster's office, by agreement of the parties, the
15:13:42 16 outside counsel were not present.

15:13:43 17 THE COURT: Okay. Anything that the defendants
15:13:46 18 need to add to that?

15:13:47 19 MS. DUNN: No, Your Honor.

15:13:48 20 THE COURT: All right. I expect those to
15:13:50 21 continue.

15:13:51 22 All right. Paragraph 13, plaintiff's issues of
15:13:59 23 fact on whether defendants have been unjustly enriched and
15:14:05 24 ARM is entitled to royalties or disgorgement.

15:14:20 25 MS. DURIE: I apologize, Your Honor. Your Honor

15:14:22 1 is on --

15:14:23 2 THE COURT: Paragraph 13 is plaintiff's issues
15:14:26 3 of fact. When we looked through those in Exhibit 2, we had
15:14:31 4 questions about the assertion of unjust enrichment, which I
15:14:37 5 don't recall ever hearing about before, or disgorgement.

15:14:43 6 MS. DURIE: I think the short answer is that
15:14:46 7 those would be issues, equitable issues for the --

15:14:52 8 THE COURT: When did you think we were going to
15:14:54 9 deal with these equitable issues?

15:14:57 10 MS. DURIE: I think, Your Honor, that the
15:14:59 11 parties at least are in agreement that it would make sense
15:15:04 12 following the jury verdict to set a further date to appear
15:15:08 13 in front of Your Honor and present any additional evidence
15:15:13 14 that bore on the remedies question.

15:15:35 15 THE COURT: Okay.

15:15:40 16 MS. DUNN: Your Honor, our position would be as
15:15:42 17 Mr. Blumenfeld said, these desired remedies were not pled.

15:15:58 18 THE COURT: Okay. I don't know what I'm
15:16:00 19 supposed to do. I have no idea if they were pled. Nobody
15:16:06 20 -- what am I supposed to do here? When is it that you all
15:16:11 21 think I'm going to deal with this? Like you're just going
15:16:15 22 to what -- first of all, if we need to deal with the
15:16:19 23 equitable issues, I typically deal with equitable issues in
15:16:23 24 the evenings while the jury is out during the time that
15:16:25 25 we're having a trial. So you need to figure out how that

15:16:30 1 would work in this case. And then if there is something
15:16:39 2 where you say well, we need the jury verdict in order to do
15:16:42 3 it, then how much time do you think you're going to need?
15:16:51 4 Because we ought to schedule it right now. We can do it
15:16:55 5 right now. So normally I would say we'll hear any equitable
15:17:00 6 issues in the evening after the jury leaves. How's that
15:17:08 7 work?

15:17:09 8 MS. DUNN: Your Honor, I think what the parties
15:17:12 9 had discussed, which I don't know if this is what the Court
15:17:18 10 is talking about, when it talks about equitable issues, that
15:17:22 11 if there is a jury verdict, there would be a remedies phase
15:17:25 12 to discuss specific performance.

15:17:27 13 THE COURT: Yes. But assume that there might be
15:17:31 14 other equitable issues, like I find based on the letters
15:17:34 15 that you're going to submit that unclean hands doesn't go to
15:17:38 16 the jury, it comes to me, that I allow for some of these
15:17:42 17 other disgorgement, whatever, I don't know, can we then do
15:17:51 18 those issues -- if the only issue is specific performance
15:17:54 19 that requires the jury, any other issues that I determine to
15:17:58 20 be equitable based on these letters, can we do those in the
15:18:02 21 evenings after the jury leaves?

15:18:04 22 MS. DUNN: Your Honor, I think -- I have no
15:18:07 23 objection to that, but I think part of what's going on here,
15:18:11 24 and the parties I'm sure are at fault for this, is there are
15:18:15 25 things in these filings that -- where there is not agreement

15:18:19 1 that there should be on a decision on them at all because
15:18:23 2 they weren't pled so that is an issue --

15:18:25 3 THE COURT: When did you think you were going to
15:18:28 4 raise that with me? Truly, I'm like lost, you keep raising
15:18:33 5 new stuff to me, so when did you think you were going to
15:18:37 6 deal with this?

15:18:38 7 MS. DUNN: Your Honor --

15:18:39 8 THE COURT: You're just going to wait until
15:18:42 9 what, I set a hearing in April and then you could brief some
15:18:45 10 more? No.

15:18:46 11 MS. DUNN: I understand.

15:18:46 12 THE COURT: No. You guys can't do this
15:18:49 13 piecemeal stuff. Okay? So what's your plan because this
15:18:54 14 all has to be done. You will have -- for equitable relief,
15:19:01 15 you have -- your options are the day after -- the evenings
15:19:05 16 after whatever, and then I have time on Thursday,
15:19:11 17 January 2nd, all day, and if necessary in the afternoon of
15:19:16 18 the 3rd. So those are our times when we can do these
15:19:21 19 things. Those are our times. Tell me what your proposal is
15:19:25 20 to figure out what we're deciding in those times.

15:19:29 21 MS. DUNN: Well, Your Honor, my proposal having
15:19:31 22 not consulted with the client on availability, but I'm not
15:19:35 23 going to make it anyway is to accept Your Honor's
15:19:38 24 January 2nd and 3rd time because that will also allow for us
15:19:43 25 to have a discussion with the other side about what should

15:19:47 1 not -- and potentially brief the Court on what does not have
15:19:51 2 to be decided at all because it was put into the PTO within
15:19:55 3 the last week.

15:19:56 4 THE COURT: So just so you know, I let my
15:20:00 5 chambers have off from the 23rd until the 1st. So when I
15:20:10 6 say I let them have off, I'm not making them deal with our
15:20:14 7 motions.

15:20:15 8 MS. DUNN: Understood.

15:20:16 9 THE COURT: So I need a motion, I need you to
15:20:18 10 tell me when --

15:20:19 11 MS. DUNN: We can confirm this by next week. I
15:20:23 12 think the question is -- you know, I want to give the Court
15:20:28 13 whatever room the Court wants. Nobody expects anybody here
15:20:31 14 to work between the 23rd and the 1st certainly, but I do
15:20:34 15 think we would like to brief the issues of what have been
15:20:37 16 put in here as sort of a last minute that were not pled that
15:20:40 17 have not been litigated so the Court does not have to decide
15:20:44 18 those issues at night during a trial, our proposal --

15:20:47 19 THE COURT: This is what I am going to do. You
15:20:50 20 can Friday, you can have three pages to tell me what issues
15:20:56 21 you think -- actually, let's just start with this so I don't
15:21:01 22 have to wait until Friday. What issues do you think are
15:21:04 23 going to the jury?

15:21:08 24 Plaintiff?

15:21:09 25 MS. DURIE: ARM's claim for breach of the NuVia

15:21:17 1 ALA by NuVia and Qualcomm. And NuVia and Qualcomm's
15:21:27 2 defenses to that breach.

15:21:29 3 THE COURT: Okay. Don't get to defenses. Your
15:21:33 4 only claim is breach?

15:21:34 5 MS. DURIE: Correct.

15:21:35 6 THE COURT: You say NuVia breached by not
15:21:38 7 getting your approval when it did the triangular merger,
15:21:43 8 right?

15:21:44 9 MS. DURIE: Yes.

15:21:44 10 THE COURT: And that somehow you were damaged
15:21:49 11 and then Qualcomm breached by using that technology in an
15:21:54 12 unlicensed manner and I guess it was -- somebody said it was
15:21:57 13 supposed to be destroyed.

15:21:59 14 MS. DURIE: Both NuVia and Qualcomm breached in
15:22:02 15 our view by closing the transaction.

15:22:05 16 THE COURT: Okay.

15:22:05 17 MS. DURIE: And continuing to use ARM
15:22:08 18 confidential --

15:22:08 19 THE COURT: Okay. That's your claim. What
15:22:10 20 defenses, whether I agree or not, but tell me what defenses
15:22:16 21 you believe should be going to the jury even though
15:22:19 22 understand I may say some of them are equitable.

15:22:23 23 MS. DUNN: First of all, the 16.3 breach was not
15:22:26 24 pled, and is also -- there is no remedy for it that the
15:22:33 25 plaintiffs have sought so our view what is going to the jury

15:22:38 1 is the breach of 15.1 which is the termination provision,
15:22:44 2 that is as to both NuVia and Qualcomm.

15:22:48 3 And then with respect to our defenses, we
15:22:53 4 believe that it is going to the jury whether we proved that
15:22:59 5 our CPUs are licensed under Qualcomm's ALA and whether we
15:23:05 6 proved that ARM's statements that the Qualcomm ALA expires
15:23:09 7 in 2025 are false. And those were our DJ claims.

15:23:16 8 But this is one reason I thought the Court might
15:23:19 9 like briefing is that there is some -- the idea that the
15:23:23 10 16.3 is now a breach claim with a remedy that was pled is
15:23:29 11 not true.

15:23:30 12 THE COURT: Yes. But where does unclean hands
15:23:32 13 fall into this? You're just telling me what you think are
15:23:35 14 issues. I don't know what the claims are. Like they have a
15:23:38 15 breach of contract claim, you have a we didn't breach
15:23:43 16 defense. I don't know what these other things are. You
15:23:45 17 have a license defense. Is that a license defense to a
15:23:48 18 breach of contract that you didn't breach? I don't know.

15:23:53 19 MS. DUNN: Yeah, Your Honor, is the answer. And
15:23:56 20 I mean, on our verdict form we have the 15.1 breach between
15:24:02 21 -- as to Qualcomm and as to NuVia, both companies. We have
15:24:05 22 a question that gets to unclean hands, which is whether we
15:24:11 23 have proven that ARM acted towards Qualcomm in such a way
15:24:15 24 that ARM -- that the relief it seeks should be denied, the
15:24:19 25 relief that it seeks. We have a question --

15:24:22 1 THE COURT: Hold on. Originally you said 15.1,
15:24:26 2 CPUs licensed under the Qualcomm and ARM's statements are
15:24:30 3 **false**.

15:24:30 4 MS. DUNN: I apologize.

15:24:32 5 THE COURT: I don't know, now you're talking
15:24:34 6 about unclean hands based on facts that I don't know what
15:24:38 7 the basis for those are. These are the basis of unclean
15:24:41 8 hands or unclean hands is somehow different and I find it
15:24:44 9 really kind of frustrating that we're at a pretrial
15:24:48 10 conference and you guys haven't talked about what's in this
15:24:51 11 case. And to the extent that they raised issues that are in
15:24:54 12 the pretrial order that you said they didn't raise, I don't
15:24:57 13 know what you were keeping it a secret for.

15:24:59 14 MS. DUNN: I understand, Your Honor.

15:25:01 15 THE COURT: I still -- I'm lost. 15.1.

15:25:03 16 MS. DUNN: So with respect to the defenses that
15:25:08 17 we believe go to the jury, unclean hands.

15:25:13 18 THE COURT: Based on?

15:25:14 19 MS. DUNN: Factually based on or based on?

15:25:17 20 THE COURT: What is the basis of your unclean
15:25:19 21 hands defense? What did they do?

15:25:22 22 MS. DUNN: First of all, they waited a year to
15:25:28 23 terminate. During that year they used the threat of
15:25:32 24 termination to try to negotiate up their royalty rates.
15:25:38 25 They interfered with our customers. They told Samsung that

15:25:41 1 our license would expire. They -- I won't go into all the
15:25:49 2 internal documents that we have from ARM, but it's clear
15:25:54 3 what was going on, that they slow rolled the negotiations on
15:25:58 4 purpose. So there is a whole host of unclean hands facts
15:26:05 5 that support this defense.

15:26:07 6 Some of those facts similarly support the waiver
15:26:10 7 defense because ARM acted as if -- I should say as an
15:26:19 8 antecedent matter. Qualcomm even before the merger closed
15:26:22 9 or the acquisition closed alerted ARM that it would be
15:26:27 10 preceding under the Qualcomm ALA with the NuVia employees,
15:26:32 11 it was very clear, and that was a year before the contract
15:26:35 12 was terminated.

15:26:36 13 THE COURT: Okay. Okay. Fine, unclean hands
15:26:39 14 based on whatever you just said. Waiver based on the fact
15:26:42 15 that they waited a year. What else do you think is going to
15:26:45 16 the jury?

15:26:46 17 MS. DUNN: And then that we are licensed under
15:26:50 18 our license agreement. And then our declaratory judgment
15:26:57 19 request about ARM's statements to our license -- to our
15:27:01 20 customer that our license would expire is false.

15:27:06 21 THE COURT: That's it?

15:27:07 22 MS. DUNN: I believe that's it, unless somebody
15:27:09 23 here tells me I'm forgetting something. I'm sorry, ARM's
15:27:14 24 failure to perform under the NuVia ALA, which we would
15:27:18 25 elicit evidence of that as a defense. Obviously we're not

15:27:23 1 bringing that as a separate claim.

15:27:28 2 THE COURT: Okay. So you are then on Friday
15:27:34 3 going to submit to me three pages that tell me why unclean
15:27:39 4 hands and waiver and anything else that may be equitable is
15:27:42 5 not equitable. And you can have until the end of the day
15:27:48 6 Monday to respond, plaintiff. And then what other equitable
15:28:00 7 issues would there be based on any possible decision by the
15:28:06 8 jury?

15:28:08 9 MS. DURIE: I think the additional issues are
15:28:11 10 all remedies issues. We do believe that we have pled a
15:28:18 11 request both for specific performance and for various other
15:28:22 12 categories of relief incidental to that request. But all of
15:28:26 13 those would be remedies issues for the Court.

15:28:29 14 THE COURT: Okay. So then what we're going to
15:28:32 15 do is you guys need to talk and you need to identify to them
15:28:37 16 what you think has not been properly pleaded and then when
15:28:42 17 they tell you what those things are, you can send me three
15:28:45 18 pages that say no, here they're pleaded.

15:28:50 19 MS. DURIE: Right.

15:28:51 20 THE COURT: Okay. And then you can respond by
15:28:53 21 the end of the day Monday to that.

15:28:54 22 MS. DUNN: Understood, Your Honor. Thank you.

15:28:57 23 THE COURT: And I am toying with the idea
15:29:01 24 depending on whether this is -- many of these issues are, in
15:29:08 25 fact, equitable that we may just have a four-day jury trial

15:29:12 1 and one of those days will be equitable issues. But it may
15:29:17 2 also be that I deal with the other equitable issues during
15:29:23 3 the trial and then we can deal with any specific performance
15:29:28 4 issues on the 2nd. But I need to figure that out once I see
15:29:34 5 your submissions.

15:29:39 6 Okay. Exhibits. There was something that I saw
15:29:51 7 that suggested somebody wanted to submit an edited exhibit
15:29:59 8 list or something.

15:30:03 9 MS. YING: Your Honor, the parties have
15:30:05 10 continued to confer since the filing of the PTO on the 13th
15:30:08 11 and I believe both sides have updates to their exhibit lists
15:30:13 12 as well as their deposition designations that they have
15:30:16 13 exchanged with each other so we would just need to get those
15:30:19 14 into the version of the PTO that Your Honor has, whether we
15:30:24 15 do that via a revised --

15:30:28 16 THE COURT: Why weren't they included? I mean,
15:30:30 17 it's a pretrial order. I don't usually allow for -- I mean,
15:30:35 18 why -- it's kind of a waste of my time to have to deal with
15:30:39 19 a pretrial order and then we have like other little bits of
15:30:43 20 it in a different portion of the record. So why weren't --
15:30:48 21 why wasn't this done before?

15:30:50 22 MS. YING: I think, Your Honor, to be frank I
15:30:52 23 think the parties have continued to confer on outstanding
15:30:56 24 issues.

15:30:56 25 THE COURT: But conferring suggests that you

15:30:58 1 would lessen the exhibits and the deposition designations.

15:31:01 2 I'm getting the feeling that you're adding.

15:31:04 3 MS. YING: I believe there may have been
15:31:07 4 additions as well as deletions. I can't speak to both of
15:31:10 5 them.

15:31:10 6 THE COURT: Why do I let that happen?

15:31:13 7 MS. YING: I think, Your Honor, we've made these
15:31:16 8 edits in good faith and have been agreed upon, so I think,
15:31:20 9 you know, the parties would like to submit that universe to
15:31:25 10 Your Honor if Your Honor would allow us to do so. And I'll
15:31:30 11 let anyone from ARM speak as well, I think Mr. --

15:31:34 12 THE COURT: I don't understand. It's not
15:31:36 13 supposed to be a piecemeal thing. What are you doing? Why
15:31:40 14 wasn't it in there first? What's the big pause?

15:31:45 15 MR. HUTTINGER: I think in large part the
15:31:46 16 changes to the exhibit list are things like fixing,
15:31:50 17 correcting end Bates numbers and are not terribly
15:31:54 18 substantial.

15:31:55 19 THE COURT: You don't really need to do it, do
15:31:56 20 you, if you all agree? What's the big deal?

15:32:00 21 MR. HUTTINGER: There are a handful of
15:32:01 22 supplemental exhibits.

15:32:02 23 THE COURT: Why weren't they included?

15:32:04 24 MS. YING: I think what happened to be frank, I
15:32:06 25 think the parties were looking at -- for example, I know

15:32:09 1 there are some things, some of the expert reports they were
15:32:11 2 trying to figure out if they had the correct date ranges and
15:32:15 3 we may or may not have realized paper copies of things were
15:32:18 4 sent. There were continuing discussion about these that we
15:32:22 5 flagged to basically sort out after the 13th whether the PTO
15:32:26 6 was due and it was not intended to --

15:32:29 7 THE COURT: No, the problem I have is then when
15:32:31 8 I have to look at a pretrial order and there is an issue, I
15:32:35 9 have to go find other portions, that's why I expect people
15:32:39 10 to do what they need to do and give me a pretrial order that
15:32:42 11 is the universe of what they intend to include. And I don't
15:32:49 12 want a -- if you're going to say give me another 900 page
15:32:53 13 pretrial order if that was going to be the suggestion.

15:32:55 14 MS. DURIE: I was going to suggest that we
15:32:58 15 submit an amended pretrial order that replaced this with the
15:33:03 16 additional exhibits.

15:33:06 17 THE COURT: Yeah, that's an additional 900 page
15:33:09 18 document which I could live without. Thanks. So I am not
15:33:13 19 hearing that this is anything that's terribly important, so
15:33:18 20 is it important? And if so, tell me what these things are
15:33:22 21 that are so important now that you need them but they
15:33:25 22 weren't so important that you cared enough to put them in
15:33:28 23 originally.

15:33:30 24 MS. NYARADY: Your Honor, I want to say with
15:33:32 25 respect to the deposition designations, the additions there

15:33:35 1 have to do with the fact that the parties conferred after
15:33:38 2 the filing of the pretrial order in an effort to whittle
15:33:43 3 down the witness list and some of the will calls moved off,
15:33:47 4 some of the may calls moved off necessitating some of the
15:33:50 5 additional designations for people that perhaps are no
15:33:53 6 longer coming to trial. And there was a paragraph in the
15:33:56 7 pretrial order that I think is in dispute that relates to
15:33:59 8 this as well in terms of this, so it would be important for
15:34:02 9 us to update those designations, but it's an effort by the
15:34:06 10 parties to streamline who is really being called live.

15:34:11 11 THE COURT: That's what I needed. Thank you.

15:34:12 12 You may do that.

15:34:13 13 MS. NYARADY: Thank you, Your Honor.

15:34:14 14 THE COURT: You may do that. But I don't want a
15:34:17 15 whole new pretrial order and what you need to do is you need
15:34:21 16 to work with Ms. Welham to have those things added to or
15:34:26 17 swapped out in the pretrial order because I don't want parts
15:34:30 18 of it in all different places.

15:34:32 19 MS. NYARADY: Thank you, Your Honor.

15:34:33 20 Understood.

15:34:33 21 THE COURT: Okay. Paragraph 39. Documents.
15:35:10 22 Defendant, can you help me understand what the point of your
15:35:12 23 proposal was. I don't know that I care, but I don't really
15:35:17 24 understand what the point is.

15:35:19 25 MS. NYARADY: Yes, Your Honor. Thank you. So

15:35:21 1 this, I think as a practical matter it probably has no
15:35:25 2 impact, but we did not want to have a stipulation in the
15:35:29 3 pretrial order that said that documents that were produced
15:35:33 4 by a party are deemed to be business records of that party
15:35:36 5 because we produced all of the documents with a Qualcomm
15:35:41 6 Bates number. Some of the documents are NuVia business
15:35:44 7 records, some of them are Qualcomm business records, so we
15:35:48 8 were trying -- and I appreciate that maybe the language
15:35:52 9 didn't serve its purpose if it's not understandable, but I
15:35:55 10 was trying to get across that it is a business record for
15:35:58 11 the party that created the document. So the requirements of
15:36:03 12 being created in the regular course of business activity and
15:36:06 13 that they were kept by the business, we wanted to make it
15:36:10 14 clear that the NuVia documents are not Qualcomm business
15:36:14 15 records and vice versa. I think where this really comes up
15:36:17 16 is more in a 602 issue depending on which witness they try
15:36:21 17 to use it with which document was created. I don't think it
15:36:25 18 impacts how the trial is going to go, but I just wanted to
15:36:29 19 be clear on the record that we can't enter into a
15:36:31 20 stipulation that every document produced with a Qualcomm
15:36:35 21 Bates number in the litigation as Qualcomm business record.

15:36:39 22 THE COURT: It could have come in NuVia.

15:36:42 23 MS. NYARADY: Correct.

15:36:43 24 THE COURT: What's the problem with that?

15:36:44 25 MS. DURIE: My concern is we didn't understand

15:36:46 1 what the practical important of this was. Qualcomm produced
15:36:50 2 all of these documents so they were all maintained by
15:36:52 3 Qualcomm. We do understand that some of them were created
15:36:55 4 at NuVia. It wasn't clear to us what distinction the
15:36:58 5 defendants were trying to draw or for what purpose.

15:37:01 6 THE COURT: Did you ask?

15:37:03 7 MS. DURIE: I did not personally participate in
15:37:06 8 the meet and confer.

15:37:08 9 THE COURT: I mean, that's silly. Right? You
15:37:15 10 submit this to me, we had to spend our time looking at this,
15:37:17 11 we had to spend our time trying to figure out what this
15:37:21 12 meant and you don't even know, you don't even bother to talk
15:37:24 13 to each other. That's just kind of -- that's not very
15:37:28 14 respectful of anyone's time but your own.

15:37:31 15 MS. NYARADY: Your Honor, we did discuss this at
15:37:33 16 the meet and confer. I was on the meet and confer. I want
15:37:37 17 to say what I told you, I told ARM, I want to make that
15:37:40 18 clear. We are not trying to disrespect the Court's time. I
15:37:43 19 made it clear that I thought there was no practical impact
15:37:46 20 to the trial. We were preserving because we had different
15:37:49 21 parties and different business records.

15:37:50 22 THE COURT: All right. Defendants' proposals
15:37:54 23 are accepted.

15:38:05 24 Paragraph 48 on demonstratives.

15:38:11 25 MS. DURIE: We have resolved that one, Your

15:38:13 1 Honor.

15:38:13 2 THE COURT: There is no dispute?

15:38:15 3 MS. DURIE: Correct.

15:38:15 4 THE COURT: You say absent agreement

15:38:17 5 demonstratives are illustrative. I'm saying they're not
15:38:21 6 evidence even if you agree to it.

15:38:23 7 MS. DURIE: Understood.

15:38:25 8 THE COURT: Paragraph 51 and 52 on witness
15:38:32 9 lists. Is there an issue on this one?

15:38:41 10 MR. FUNG: Yes, Your Honor. Nicholas Fung on
15:38:46 11 behalf of plaintiff, ARM. The first issue, we object to
15:38:49 12 Qualcomm's identification of a witness named Nick Jones.
15:38:53 13 Nick Jones was never included on any of Qualcomm's initial
15:38:56 14 disclosures. We found out for the first time a few weeks
15:38:59 15 ago that Qualcomm intended to call him at trial when they
15:39:02 16 added him to their initial witness list. We spoke to
15:39:04 17 Qualcomm about this and they pointed us to an interrogatory
15:39:08 18 response, a supplemental interrogatory response where
15:39:11 19 Mr. Jones was listed along with seven other witnesses as
15:39:14 20 having knowledge in response to that interrogatory. That's
15:39:16 21 not sufficient at all to provide us notice that they were
15:39:19 22 calling Mr. Jones at trial.

15:39:21 23 There is case law supporting the proposition
15:39:23 24 that simply mentioning a witness in a rog response does not
15:39:27 25 provide notice that that witness be called at trial. We

15:39:31 1 believe Mr. Jones should be precluded from testifying. So
15:39:34 2 that's one of the issues.

15:39:35 3 The other issue is Qualcomm has objected to ten
15:39:39 4 of our witnesses, or may call witnesses because they were
15:39:42 5 never deposed. And we narrowed this dispute quite a bit on
15:39:47 6 Monday. We've agreed not to call four of those ten
15:39:50 7 witnesses and today we can agree not to call five of the
15:39:54 8 remaining six of the witnesses. We would like to reserve
15:39:57 9 our ability to call Mr. Jeff Defilippi. Mr. Defilippi was
15:40:05 10 disclosed on our initial disclosures. Qualcomm did have a
15:40:08 11 chance to depose him during fact discovery, they chose not
15:40:12 12 to, and they still oppose Mr. Defilippi. They requested a
15:40:17 13 deposition of him. We don't think they're entitled to it.

15:40:21 14 THE COURT: When did they ask for a deposition
15:40:23 15 of him?

15:40:24 16 MR. FUNG: During the pretrial order.

15:40:25 17 THE COURT: But never did before?

15:40:27 18 MR. FUNG: No Your Honor.

15:40:28 19 THE COURT: It was in your Rule 26 disclosures?

15:40:30 20 MR. FUNG: Yes, the third amended Rule 26
15:40:32 21 disclosers. With that being said to moot this dispute, if
15:40:35 22 Qualcomm would agree not to call Mr. Jones, we will agree
15:40:39 23 not to call Mr. Defilippi, but if they intend to present
15:40:44 24 Mr. Jones, we don't think they're allowed, we would want to
15:40:49 25 call Mr. Defilippi.

15:40:51 1 Thank you.

15:40:51 2 THE COURT: Okay.

15:40:52 3 MS. NYARADY: Your Honor, with respect to Nick
15:40:57 4 Jones, he was not only identified in an interrogatory
15:41:01 5 response, but he was also identified at the deposition of
15:41:08 6 Ms. Voss back in November of 2023. And under the law, we
15:41:14 7 think that is sufficient. The rules specifically says that
15:41:18 8 you have a duty to supplement if the person is not otherwise
15:41:22 9 identified through discovery. And, in fact, when you go to
15:41:26 10 the committee notes it specifically says that there is no
15:41:30 11 obligation to supplement, for example, when a witness is
15:41:36 12 disclosed during the taking of a deposition. But we
15:41:40 13 understand he was not on the initial disclosures. We think
15:41:43 14 he was disclosed as being involved. He was identified at
15:41:46 15 the deposition and in the rog response for the same subject
15:41:49 16 matter.

15:41:49 17 THE COURT: And the interrogatory response, that
15:41:52 18 wasn't like on the last day of fact discovery or anything?

15:41:55 19 MS. NYARADY: No, it was not. There were still
15:41:57 20 depositions taking place a month after that. And so, you
15:42:01 21 know, we think that he ought to be allowed to testify at
15:42:04 22 trial.

15:42:07 23 THE COURT: Okay. So if he should be allowed to
15:42:10 24 testify at trial, why can't Mr. Defilippi --

15:42:15 25 MS. NYARADY: So --

15:42:16 1 THE COURT: -- who actually was disclosed in
15:42:19 2 Rule 26 disclosures.

15:42:20 3 MS. NYARADY: He was disclosed in the Rule 26
15:42:22 4 disclosures for the limited purpose of the counterclaim that
15:42:25 5 we have dropped. It was in April of 2024. And we were not
15:42:29 6 able to take his deposition because by virtue of being
15:42:32 7 allowed to add that counterclaim we said we would only take
15:42:36 8 one 30(b) (6) deposition which is what we did. They did not
15:42:39 9 put him up for that. At the same time, Your Honor, to make
15:42:43 10 life easy, I don't object to him being at trial if we could
15:42:47 11 have a short trial deposition.

15:42:49 12 THE COURT: Would you agree to a deposition of
15:42:50 13 Mr. Jones?

15:42:51 14 MS. NYARADY: We absolutely would, Your Honor.

15:42:53 15 THE COURT: How about that, I let you both
15:42:55 16 depose them pretrial?

15:42:57 17 MR. FUNG: I mean, I want to make one
15:42:59 18 clarification. Those interrogatory responses where
15:43:02 19 Mr. Jones was disclosed, it was three weeks before the fact
15:43:05 20 discovery, it was buried in the list of eight witnesses. I
15:43:08 21 want to make --

15:43:09 22 THE COURT: Buried seems a little dramatic for
15:43:12 23 eight.

15:43:13 24 MR. FUNG: Understood, Your Honor. Your
15:43:15 25 proposal allowing us to take a deposition of Mr. Jones, that

15:43:18 1 will be acceptable to us.

15:43:20 2 THE COURT: Okay.

15:43:24 3 MS. NYARADY: Your Honor, in terms of the
15:43:26 4 deposition, we would propose a couple of hours for each
15:43:28 5 witness.

15:43:29 6 THE COURT: You can both figure that out.

15:43:31 7 MS. NYARADY: Okay.

15:43:32 8 THE COURT: Paragraph 56, you can't agree on who
15:43:44 9 the corporate representative is, really?

15:43:51 10 MS. NYARADY: So Your Honor, subsequent to
15:43:53 11 having filed a pretrial order, we did exchange names with
15:43:57 12 respect to the corporate representatives. We have no
15:44:01 13 objection. We haven't heard from ARM as to whether they
15:44:05 14 have any objection, but I think perhaps this is resolved.

15:44:09 15 MS. DURIE: We do not. I don't know that there
15:44:13 16 would be a basis for one, but we do not have one.

15:44:16 17 THE COURT: I am just going to strike -- I don't
15:44:21 18 even know what I'm doing with this paragraph at this moment,
15:44:24 19 but the parties may each have a corporate representative sit
15:44:28 20 at the table. And experts are not excluded from the
15:44:32 21 courtroom. And I don't care if there is agreement on who
15:44:40 22 the corporate representatives are, but if you have one,
15:44:44 23 that's terrific.

15:44:45 24 Okay. 68. The witness will be called only
15:45:01 25 once. There are so many words here with the -- what is the

15:45:08 1 crux of the dispute?

15:45:09 2 MS. DURIE: Apologies. We have included on our
15:45:12 3 witness list Gerard Williams, the former CEO of NuVia, now a
15:45:18 4 senior vice-president at Qualcomm. We would intend to call
15:45:21 5 him in our case-in-chief adverse as we believe the rules
15:45:26 6 permit. Qualcomm has objected to that. And I do not
15:45:32 7 understand the basis for that objection and I will assure
15:45:35 8 the Court it is not for lack of asking, but we will let them
15:45:39 9 speak for themselves.

15:45:42 10 MS. NYARADY: Your Honor, we had proposed a
15:45:47 11 different course of action where the witnesses will be
15:45:50 12 called only once, will be called by the sponsoring party and
15:45:54 13 allowing the other side to go beyond the scope in cross.
15:46:00 14 And we would propose leaving open ARM's case until
15:46:03 15 Mr. Williams testifies and they finish cross-examining him
15:46:08 16 so saving the JMOLs until after he testifies, we think it
15:46:12 17 would be more orderly.

15:46:14 18 And as part of trying to resolve this, we also
15:46:18 19 put in there that if this is adopted that the witness can be
15:46:24 20 -- any live witness can be presented by deposition and the
15:46:28 21 opposing party's presentation of their case.

15:46:31 22 THE COURT: I am going to allow NuVia -- ARM to
15:46:34 23 call Mr. Williams in its case-in-chief and to the extent
15:46:39 24 that defendant wants to ask whatever it wants to ask in the
15:46:44 25 middle of that case-in-chief, defendants may.

15:46:48 1 MS. NYARADY: So if I understand, Your Honor, we
15:46:50 2 can go beyond the scope for cross and put him on once, it
15:46:54 3 will just be in ARM's case, is that what you're saying?

15:46:57 4 THE COURT: Yes.

15:46:58 5 MS. NYARADY: And with respect to the video, we
15:47:00 6 would ask that if he's going to be called in their case that
15:47:03 7 they not be allowed to play video and present him in their
15:47:07 8 case.

15:47:09 9 THE COURT: That seems fair.

15:47:10 10 MS. DURIE: That's fine.

15:47:12 11 MS. NYARADY: Thank you, Your Honor.

15:47:13 12 THE COURT: Okay. We already talked about 78
15:47:21 13 and 79, equitable stuff. The trial order, I don't know what
15:47:43 14 the dispute is.

15:47:45 15 MS. DURIE: I think this turns entirely on
15:47:47 16 whether the Court -- what the Court determines with respect
15:47:50 17 to the counterclaims and whether they are equitable or legal
15:47:55 18 and what gets tried to the jury. I don't think there is any
15:47:59 19 other dispute other than that embedded in here.

15:48:01 20 THE COURT: Okay.

15:48:02 21 MS. DUNN: Your Honor, I agree with counsel on
15:48:04 22 that. And we will brief this. I want to say, though,
15:48:11 23 strongly that the law is that they are not equitable. So --

15:48:15 24 THE COURT: I don't care what you say, prove it.
15:48:18 25 Show me in your papers. Okay?

15:48:19 1 MS. DUNN: We will do so.

15:48:20 2 THE COURT: You keep telling me that. It's not
15:48:22 3 helpful. It just makes me annoyed, and I rather not be
15:48:27 4 annoyed. You promised me you're going to show me, I'll read
15:48:30 5 the case.

15:48:31 6 MS. DUNN: Sounds good.

15:48:32 7 THE COURT: You just saying I feel strongly
15:48:34 8 about it is kind of counterproductive and it makes both of
15:48:38 9 us feel bad right now. Why don't you sit down and you can
15:48:41 10 submit your papers.

15:48:44 11 Length of trial. I am going to hold off on that
15:48:49 12 until I make a determination as to what's going to go in
15:48:54 13 front of the jury.

15:48:56 14 Jury selection. You all have agreed -- well, I
15:49:03 15 don't remember. I have a bunch of trials coming up. Have
15:49:08 16 you been asked if you'll agree to let a magistrate judge
15:49:12 17 pick the jury on the 12th or the 13th?

15:49:15 18 MS. DURIE: Yes. And I believe we have agreed
15:49:17 19 that we will.

15:49:19 20 MS. NYARADY: Yes, Your Honor.

15:49:20 21 THE COURT: Great. Sealing the courtroom.
15:49:31 22 Generally if you want to seal the courtroom you have to meet
15:49:38 23 the standard from the Third Circuit which is a very
15:49:43 24 difficult standard to meet. It's basically strict scrutiny
15:49:48 25 which means you probably lose. If you do think that you can

15:49:53 1 meet that and you want the courtroom closed for some reason,
15:49:56 2 you must tell me in advance. If you don't tell me in
15:50:01 3 advance, then I am definitely going to deny the request, and
15:50:07 4 either you won't be able to seal the courtroom or you won't
15:50:10 5 be able to if it's the other side's information use that in
15:50:14 6 the way that you want.

15:50:15 7 Why is all this stuff under seal for thirty days
15:50:29 8 after the conclusion of the trial? I mean, we're going to
15:50:33 9 have exhibits that are shown up on the screen. What's my
15:50:35 10 basis to say it's appropriate that those be sealed?

15:50:42 11 MS. DURIE: I believe, Your Honor, this is a
15:50:44 12 reference to transcripts of sealed testimony and sealed
15:50:47 13 exhibits. So it would provide time for the parties to
15:50:53 14 undesignate portions of those for public consumption.

15:50:58 15 THE COURT: All right. Thank you for that
15:50:59 16 clarification. That's okay.

15:51:00 17 The parties may access the courtroom to set up
15:51:06 18 anything they want on Friday, December the 13th in the
15:51:09 19 afternoon. Contact Mr. Buckson about that.

15:51:15 20 Paragraph 95. At the pretrial conference, this
15:51:21 21 sounds ominous. At the pretrial conference defendants would
15:51:24 22 like to discuss with the Court the process by which they may
15:51:27 23 work around a counsel conflict.

15:51:31 24 MR. BLUMENFELD: Your Honor, we hope this won't
15:51:34 25 even come up, but we have an issue with an agreement by Paul

15:51:44 1 Weiss lawyers not to get into issues involving Apple. I'm
15:51:48 2 not sure that there will be any issues involving Apple that
15:51:51 3 come up at trial, but if there is something that one of
15:51:54 4 their witness says about Apple, we would like to have the
15:51:58 5 opportunity to have Ms. Ying or I do the short part of that
15:52:02 6 cross-examination. I don't think there is any opposition to
15:52:05 7 that.

15:52:07 8 MS. DURIE: There is no objection to that.

15:52:10 9 THE COURT: That sounds find.

15:52:13 10 MR. BLUMENFELD: Thank you.

15:52:16 11 THE COURT: So I have jury selection will take
15:52:25 12 place on the 16th, so apparently I'm just not familiar with
15:52:39 13 what's been done, if that's the case, then with respect to
15:52:41 14 the voir dire and the preliminary instructions, the voir
15:52:50 15 dire, plaintiffs have to bring copies for the jurors. You
15:52:53 16 have to get them 24 hours, by noon the day before we're
15:52:57 17 going to select the jury which at this point would be the
15:53:00 18 12th.

15:53:04 19 On or before noon on Friday, December 13th, the
15:53:09 20 parties need to provide electronic versions of all trial
15:53:13 21 exhibits to the exhibit list to us in a single folder. The
15:53:17 22 best way to do that is to get them to us on a flash drive,
15:53:20 23 but work with your IT departments and coordinate with
15:53:25 24 Mr. Buckson so we can have all trial exhibits electronically
15:53:28 25 on the first day of trial. The exhibits need to be named

15:53:30 1 with their exhibit numbers, JTX, PTX, just say JTX 1, PTX 2,
15:53:40 2 so if I hit the files at top they'll come up in order.
15:53:44 3 Additionally as previously mentioned -- it wasn't previously
15:53:48 4 mentioned, but each morning the parties need to send an
15:53:51 5 e-mail to Mr. Buckson and Ms. Welham each trial day the
15:53:56 6 witness folders for each witness. The witness folders
15:53:58 7 should contain the exhibits that would have otherwise gone
15:54:00 8 into a witness binder organized by exhibit number. Also
15:54:04 9 include any demonstratives to be used with that witness.

15:54:08 10 And direct exams that are happening, to the
15:54:11 11 extent that there is going to be a cross binder that should
15:54:15 12 also be provided to me by flash drive, and in that one, if
15:54:19 13 you're going to use a deposition, include the deposition for
15:54:23 14 me. You need to send the cross binders to me, but if you
15:54:28 15 don't want to send the cross binders to the other side until
15:54:31 16 the witness is called, that's fine. And that's just because
15:54:34 17 we don't take paper copies of these things, so that way I
15:54:38 18 have them all in one place to pull things up if there is a
15:54:43 19 dispute.

15:54:45 20 Juror notebooks, if you guys agree on a set of
15:54:48 21 documents that the jury should have in binders, that's fine,
15:54:51 22 if you don't agree, then there are no jury binders.

15:54:54 23 You won't need to play the patent video, is that
15:55:00 24 right?

15:55:00 25 MS. DURIE: I don't think so, Your Honor.

15:55:02 1 THE COURT: That's just in here from a different
15:55:07 2 case. That's good. I don't know why you would want to.

15:55:11 3 Sorry.

15:55:14 4 After trial, I need for you to review the trial
15:55:18 5 transcript and submit any corrections to the court reporter
15:55:21 6 no later than two weeks after trial. That way when we get
15:55:24 7 to post-trial briefs we don't have to deal with errata.

15:55:29 8 Juror lunches, have you guys talked about
15:55:35 9 whether you want to provide lunches for the jury?

15:55:37 10 MS. DURIE: Yes.

15:55:38 11 THE COURT: All right. Thank you for that. And
15:55:43 12 I think those were the issues that I had to discuss.

15:55:49 13 Anything else?

15:55:51 14 MS. DURIE: Not for the plaintiff, Your Honor.

15:55:55 15 MS. NYARADY: Your Honor, there were a couple of
15:55:57 16 disputes in the voir dire. I don't know if you want to take
15:56:00 17 that up now.

15:56:01 18 THE COURT: No. I'm just going to decide those.
15:56:03 19 I don't need to hear anything more on those. I generally
15:56:07 20 with respect to voir dire just do my normal. And maybe if I
15:56:14 21 see something, but I did notice that the list of witnesses
15:56:28 22 went on for about three pages. Are we really -- are all
15:56:34 23 those people really need to be on there?

15:56:37 24 MS. NYARADY: I would think not, especially in
15:56:39 25 light of conversations that we had.

15:56:41 1 THE COURT: Why don't you guys provide me with
15:56:43 2 an updated list that doesn't look quite so awful for jurors.

15:56:51 3 MS. NYARDY: We will also make a change just to
15:56:53 4 take OUT the language that addresses the counterclaim that
15:56:55 5 has been dropped.

15:56:57 6 And the other last question I had, Your Honor,
15:56:59 7 was whether you want us -- we had listed every lawyer who
15:57:04 8 has touched this case for each of the firms. Would you want
15:57:08 9 us to do that, because that list is quite long as well, or
15:57:11 10 do you only want lawyers who are going to appear before the
15:57:15 11 jury?

15:57:17 12 THE COURT: So I would say only lawyers who
15:57:21 13 appear before the jury, or -- but that includes if they're
15:57:25 14 going to be in court even if they're not identified, or if
15:57:30 15 they are somehow identified in a deposition. Sometimes it
15:57:36 16 will say Ms. Smith, just so that -- you know, the point of
15:57:40 17 that is just to make sure nobody knows them. I don't think
15:57:44 18 it will be an issue. It will be anyone who appears in court
15:57:48 19 whether they're speaking or not, and whether they're live or
15:57:52 20 on video.

15:57:53 21 MS. NYARADY: Understood. Thank you, Your
15:57:55 22 Honor.

15:57:56 23 THE COURT: Anything else?

15:58:00 24 MS. NYARADY: Not for the defendants.

15:58:01 25 THE COURT: All right. Thank you everyone.

15:58:05 1 COURTRoom DEPUTY: All rise. Court is
15:58:07 2 adjourned.

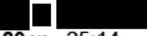
3 (Court adjourned at 3:58 p.m.)

4

5 I hereby certify the foregoing is a true and
6 accurate transcript from my stenographic notes in the proceeding.

7 /s/ Dale C. Hawkins
8 Official Court Reporter
U.S. District Court

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